



CITY OF FAIRFAX FAIRFAX, VIRGINIA

REQUEST FOR PROPOSAL

RFP Number: 14007

RFP Subject: Transportation Planning & Engineering Consultant Services

THIS PAGE AND ATTACHMENT A MUST BE COMPLETED, SIGNED, AND RETURNED WITH PROPOSAL

SEALED PROPOSALS

TO BE SUBMITTED ONLY TO:

Department of Public Works/City of Fairfax
10455 Armstrong Street, Room 200
City of Fairfax, VA 22030 / Phone: (703) 385-2690

All inquiries and questions should be made in writing and forwarded to Pamela Petrie, Management and Projects Analyst, via email to PW-Transportation@fairfaxva.gov by no later than ten (10) business days prior to the RFP due date (5:00 P.M., Monday, October 14, 2013).

THIS PAGE AND ATTACHMENT A MUST BE COMPLETED, SIGNED, AND RETURNED WITH PROPOSAL

In compliance with this Request for Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal.

LEGAL NAME & ADDRESS OF FIRM:

Company's Legal Name

By: _____
Authorized Representative - Signature in Ink

Name:

Title:

Zip: _____ Date _____

Phone: _____ Email: _____

FAX: _____ VA SCC Business Registration # _____

See Section V and Attachment A "Proof of Authority to Transact Business in VA"

This RFP contains appropriately marked proprietary and/or confidential information. ☐ No ☐ Yes

The City of Fairfax is committed to the letter and spirit of the Americans with Disabilities Act. To request a reasonable accommodation for any type of disability or that this document be made available in an alternate format, call (703) 385-2690, (TTY 711).

The City of Fairfax does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any Offeror or Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

NOTE: If a corporation, general partnership, limited partnership, or a limited liability corporation, indicate the state of incorporation or organization: _____

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A. REQUEST FOR PROPOSAL

ALL INTERESTED PARTIES:

The City of Fairfax, Virginia (hereinafter referred to as the “City”), Department of Public Works (hereinafter referred to as the “Department”) is soliciting professional engineering (non-priced) proposals from qualified consultants for transportation planning and engineering services.

The City may make multiple awards for these professional services and the resultant contract(s) will be “basic ordering agreements (“BOA”),” under which task orders will be issued pursuant to the basic ordering agreement provisions of the Virginia Public Procurement Act (the “Act”). Certain specific tasks will be related to grant-funded projects and subject to VDOT and/or federal requirements.

Parties interested in this Request may obtain a copy of the RFP from the City of Fairfax Website at:
<http://www.fairfaxva.gov/bid>

Sealed proposals for this project will be received in the Department office until 5:00 p.m. on October 14, 2013. Proposals received after this scheduled closing time will not be considered and will be returned, unopened to the sender.

In accordance with the City of Fairfax Code, Section 2-361 and the Code of Virginia, 1950, Section 2.2-4319, the City reserves the right to cancel this Request for Proposal and to reject any and all proposals. The City reserves the right to waive any informality in any proposal, to award the whole or in part to one or more consultants, to not award a contract to any consultant, or to take any such action that may be deemed to be in the best interests of the City.

In accordance with Section 2.2-4343.1 of the Code of Virginia, the City does not discriminate against faith-based organizations.

B. GENERAL

1. Information Requests

- a. All requests pertaining to this RFP must be made in writing and received no later than ten (10) business days prior to the RFP closing date. For this RFP, questions must be received prior to 5:00 p.m. on Monday, September 30, 2013. All questions shall be directed to:

Pamela Petrie
Management and Project Analyst
City of Fairfax
10455 Armstrong Street, Room 200
Fairfax, Virginia 22030
Email: PW-Transportation@fairfaxva.gov

- b. No inquiries, if received by the Management and Project Analyst (hereinafter referred to as "Project Analyst") less than ten (10) business days prior to the date set for the receipt of proposals, will be given any consideration. Any material question or interpretation of a specification or requirement, as determined by the Project Analyst, will be expressed in the form of an addendum, which will be posted on the City's Website no later than three (3) days set for receipt of proposals.
- c. Answers to any inquiries shall be in writing and shall not have any legal effect and may not be relied on for any purpose by any Offeror unless in writing.

2. Addenda

- a. The Offeror should note that changes to the RFP, in the form of addenda, are often issued between the issue date and within three (3) days before the closing of the RFP.
- b. All addenda must be signed and submitted with the Offeror's proposal.
- c. Addenda issued shall contain an acknowledgement form that must be completed, signed and included by Offeror with its proposal.
- d. The Project Analyst and the City shall not be responsible for oral clarifications and interpretations, and Offeror shall not rely on any oral interpretation or clarification of the RFP documents.

3. Offeror's Responsibilities

- a. The Offeror shall be solely responsible for carefully examining the documents comprising this RFP, including any Addenda issued during the proposed period, and for informing itself with respect to any and all conditions that might affect the cost or performance of the work. The Offeror, by submitting the proposal, agrees to such responsibility.
- b. Offerors are solely responsible for checking the City's Website at <http://www.fairfaxva.gov/bid> to ensure that they have the most current information regarding the RFP.

- c. No Offeror shall initiate or otherwise have contact with any City representative or employee, other than the Project Analyst or Project Analyst's designee concerning or related to this RFP, after the date of this RFP's release and before award or cancellation of this RFP except with the foreknowledge and permission of the Project Analyst or Project Analyst's designee. Any contact in contradiction to this requirement is prohibited and may cause the disqualification of the Offeror from this procurement process.
- d. The City is not liable for any costs incurred by any Offeror in connection with this RFP or any response by any Offeror to this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror and may not be charged to the City.
- e. All proposals submitted shall be binding for one hundred and twenty (120) calendar days following the RFP opening date, unless extended in writing by mutual consent of all parties.
- f. This RFP is being conducted in accordance with the guidelines of the Competitive Negotiation (Professional Services) method of contractor selection per the Act, which is incorporated herein by reference.

C. COMPETITION INTENDED

- 1. It is the City's intent that this RFP permits competition. It shall be the Offeror's responsibility to advise the Project Analyst, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Project Analyst no later than ten (10) days prior to the date set for acceptance of proposals. Any such notification shall be sent to the Project Analyst's email address: PW-Transportation@fairfaxva.gov. Confirmation of email receipt shall be the responsibility of the Offeror.
- 2. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All qualified Offerors are encouraged to submit proposals.

D. ELIGIBILITY

- 1. The following are minimum requirements for bid submission:
 - a. The Offeror must submit its Virginia State Corporation Commission ("SCC") registration number or justification for exemption. See Section F below entitled, "Proof of Authority to Transact Business in Virginia."
 - b. The Offeror must be currently licensed in accordance with any specific requirements of this RFP and applicable federal, state and local laws and regulations.
 - c. It is the Offeror's sole responsibility to have knowledge of the applicable licenses(s), if any, associated with this RFP's scope of work. Any applicable license shall be maintained during the entirety of the term of any resultant contract.
- 2. Any person or firm, or agent of any person or firm, currently suspended or debarred from participation in City procurement, conducting business or submitting bids on contracts by any other local government or agency of the Commonwealth of Virginia, or the Federal Government is not eligible for contract award under this RFP.

3. Any current debarment (federal, state or local jurisdiction) must be disclosed on the Company Information Form attached to this RFP.

E. PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

1. State Corporation Commission (SCC) registration requirements effective July 1, 2010 require that proposals include the identification number issued by the State Corporation Commission as proof of registration or justification for non-registration, per the requirements in this section. Any Offeror must complete the Proof of Authority to Transact Business in Virginia form (Attachment A) at the end of this RFP and submit it with its proposal. Failure to provide this information or providing inaccurate or purged information may result in the proposal being rejected.
2. Any Offeror organized or authorized to transact business in the Commonwealth under applicable law shall include in its proposal the identification number issued to it by the State Corporation Commission (SCC). The Offeror's SCC ID number shall be provided on the cover sheet of this RFP on the line entitled "VA SCC Business Registration #" and on Attachment A.
3. Any Offeror that is not required under applicable law to be authorized to transact business in the Commonwealth as a foreign business entity shall include in its proposal, for consideration by the City, a signed statement attached to the Cover Sheet of its RFP, describing why the Offeror is not required to be so authorized. Any Offeror described herein that fails to provide the required information or for whom such signed exception is not considered valid by the City, shall not receive an award unless a waiver of this requirement is granted, in writing, by the City Manager.

F. RIGHTS OF THE CITY

1. Among the indisputable rights of the City specified herein, the City, at its sole discretion may:
 - a. Cancel, withdraw, or re-advertise this RFP; accept or reject all or any part of proposals; and/or waive any informalities.
 - b. Award a contract to multiple vendors by individual items, in the aggregate, or in combination thereof whenever any such actions are in the best interest of the City.
 - c. Issue RFPs for similar work and other projects as the need may occur; issue Purchase Orders and/or expand or otherwise modify existing Purchase Orders for work similar to that being proposed hereunder, in consideration of the City's knowledge and/or evaluation of each Offeror's qualifications, expertise, capabilities, performance record, current ability to perform, location and/or distance to the project, and any and all other factors as may be pertinent to the particular project and for the convenience of the City.
 - d. Add, delete or change services, locations, requirements, frequency of service, or other factors related to the products and/or work under contract dependent upon requirements that may develop during the contract period and cannot guarantee the amount of work or predict future funding for any resultant contract.
 - e. Use any or all ideas presented in reply to this RFP, subject only to the limitations regarding proprietary/confidential data of Offeror.

2. This is a Request for Proposals and is in no way to be considered as a commitment to purchase on the part of the City.

G. NO PRE-PROPOSAL CONFERENCE

No pre-proposal conference meeting will be held for this RFP.

H. SCOPE OF WORK

1. Background Information

The City of Fairfax seeks a qualified consultant to assist with transportation planning and engineering. The City is an independent city of approximately 23,000 people within a geographic area of 6.3 square miles. The City is surrounded by Fairfax County and is located within the metropolitan Washington, D.C. region. The City functions as part of the larger region with respect to its economy, land values, development patterns, and transportation needs.

Transportation planning is a critical component of the City's long and short term planning efforts. The City has plans to construct various improvements to its transportation network such as new sidewalks, bicycle trails, traffic signal upgrades, and intersection improvements. There are also a number of high-volume regional arterials that traverse the City. The City is committed to ensuring efficient mobility within and through the City. Accordingly, the City is soliciting proposals from qualified consulting firms to assist the City in transportation planning and engineering.

2. Tasks to be Performed

a. Project Design

The City anticipates implementing a number of transportation-related projects including, but not limited to, pedestrian improvements; bicycle improvements; traffic signal upgrades; intersection modifications; corridor improvements; and storm drain improvements. For a sidewalk design, for instance, the City may task the Offeror with preparing topographic and boundary surveys, determining necessary easements and/or right of way, managing utility relocations, negotiating with private property owners, and preparing final engineered plans for construction.

b. Engineering Support for Traffic Signal Infrastructure

The City maintains 61 full traffic signals (58 in the City plus 3 at adjacent intersections in Fairfax County), as well as 2 crosswalks with in-roadway warning light systems and 1 crosswalk with a Rectangular Rapid Flashing Beacon system. A number of the City's signalized intersections are planned for upgrades with new signal poles, mast arms, span cable, controller cabinets, signal heads, pedestrian accommodations, wiring, and detection (loops and/or wireless in-road). The City also maintains an extensive fiber optic network for signal communications (to the central traffic computer system) and traffic monitoring cameras. The Offeror may be asked to provide design work for traffic signal upgrades and/or complete rebuilds at various locations, and may be asked to provide design assistance with fiber optic communications and camera systems.

c. Traffic Counts

The Offeror may be asked to collect speed, volume and vehicle classification data.

d. Traffic Calming

The Offeror may be asked to develop traffic calming recommendations for specified locations in the City.

e. Project Management

The City may task the Offeror to serve as an extension to the City staff to manage specific projects. The City has a number of projects that are either on-going or anticipated to begin with the year that may require project management assistance.

f. Public Involvement

The City may ask the selected Offeror to assist the City with outreach to impacted property owners. The outreach may be negotiation for easements and/or right of way; communication with neighborhoods or elected officials about the project; or preparation and presentation at public meetings.

g. Other Assistance With Transportation Planning and Engineering as Needed

The Offeror may be asked to provide technical assistance to the City for transportation related projects. Tasks may include but are not limited to the following:

- (1) Technical expertise
- (2) Field data collection
- (3) Planning
- (4) Site plan review
- (5) Study/report review
- (6) Review of bid documents
- (7) Preparation of bid documents

3. Licensing

Qualified Offeror must be a licensed engineering firm in the Commonwealth of Virginia.

4. Tasks Related to VDOT Grant and/or Federal-Aid Projects

Please see Attachments B, C, D and E and submit required forms as applicable.

VDOT-approved rates will be applicable for all VDOT grant-funded tasks; the Offeror shall be responsible for complying with VDOT audit and related requirements to establish approved overhead rate schedules.

I. CONTRACT TERM AND RENEWAL OPTIONS

1. The initial contract term shall cover a period of twelve months from the date of award.
2. Awarded contract(s) shall cover the target period from date of award through completion of the requirements and presentation and acceptance of the final report and/or other deliverables.
3. The City reserves the right to renew the contract upon the same pricing, terms, and conditions at the expiration of its initial term for four (4) additional, successive one-year periods, except as otherwise provided herein, contingent upon availability of funds for the purpose and the needs

of the City. Contract renewals must be authorized by and coordinated through the City's Finance Department. Automatic contract renewals are prohibited.

4. Notice of intent to renew may be given to the Offeror in writing by the City, normally sixty (60) days before the expiration date of the current contract. Failure to give such notice will not constitute a breach of the contract. This notice will not be deemed to commit the City of Fairfax to a contract renewal.
5. The Offeror shall notify the City, in writing, at least ninety (90) days prior to the then current contract period expiration if Offeror intends not to extend the contract term.
6. The City may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
7. **MULTIPLE AWARDS** - The City reserves the right to award contracts to more than one qualified Offeror, to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified Offeror or to modify or cancel in part or in its entirety the Request for Proposal, if it is in the best interest of the City to do so. Each multiple award contract will be negotiated and awarded sequentially following the same procedures set forth in Section XXIV.
8. **NON-APPROPRIATION OF FUNDS** - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose by the City of Fairfax City Council, as applicable. In the event of non-appropriation of funds by the City Council for the goods/services provided under contract, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the goods/services covered by the contract is spent, whichever event occurs first.

J. COST PROPOSAL INSTRUCTIONS

1. The City **IS NOT** requesting Cost Proposals at the present time. **NO PRICES, RATES OR FEES ARE TO BE PROVIDED WITH INITIAL PROPOSAL SUBMITTAL.**
2. The City may specifically request from top ranked Offerors non-binding binding rates, fees, and/or project costs related to this RFP during discussions.
3. The City will request from the top ranked Offeror(s) under separate cover, binding rates, fees and other applicable price/cost considerations to be used in performing work based on the contract during contract negotiations in accordance with this RFP.
4. The specific cost proposal format(s) will be provided to the top rated Offeror(s) at the time the request is made.

K. PRICES AND PRICE ADJUSTMENTS

NO PRICES, RATES OR FEES ARE TO BE PROVIDED WITH INITIAL PROPOSAL SUBMITTAL.

Short listed Offerors will be specifically requested to submit non-binding and/or binding rates, fees, and/or project costs at the applicable time during the evaluation and award process.

1. All contract unit prices will remain fixed through the first term of the contract or 365 days, whichever is later.

2. Thereafter, the Offeror may request, in writing, an increase in unit prices once every 365 days to coincide with the contract anniversary.
3. The Offeror shall provide the City prior written notice of any potential increases at least sixty (60) days prior to the proposed effective date of such increase. The request for a change in the unit price shall include as a minimum, the cause for the adjustment and the proposed effective date and, the amount of the change requested.
4. Any price increases shall be no greater than the percentage change of the CPI-U for the Washington-Arlington-Alexandria area using Table 3. Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, all items index; Washington-Baltimore, DC- MD-VA-WV area as listed for the most recent twelve month period on the U.S. Department of Labor's Bureau of Labor Statistics website or five percent (5%) whichever is lower.
5. All increases must be reviewed and approved by the City's Purchasing Department. Any price adjustment agreed to shall take place only in accordance with the schedule defined above as documented in a contract amendment.
6. Any orders placed prior to the proposed effective date of the increase shall not be subject to such increase.
7. If labor rates are requested, the rates specified by the Offeror shall include all direct and indirect overhead costs, including but not limited to, transportation, general and administrative cost, etc. Labor rates will be paid on the basis of time at the site.
8. Price reductions may be initiated by the Offeror at any time and shall be effective immediately.
9. No restocking fees will be charged for product returns under the terms of the contract, if applicable.

L. PROMPT PAYMENT DISCOUNT

1. Unless otherwise specified herein, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a proposal for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
2. In connection with any discount offered, time will be computed from the date an undisputed invoice is received by the City. In the event the Offeror does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.
3. For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the City check or issuance of an Electronic Funds Transfer, if applicable.

M. PROJECTED REQUIREMENTS / ESTIMATED QUANTITIES:

1. Unless otherwise specified, the potential tasks identified in this RFP are for information to the Offeror and for proposal evaluation purposes only. They do not necessarily indicate the actual tasks that will be ordered since such tasks will depend upon requirements that develop during the contract period.

2. Tasks or quantities described in this RFP shall not be construed to represent any amount of services of which the City shall be obligated to purchase under the contract, or relieve the Offeror of his obligation to perform all services which may be ordered under the contract.
3. The City reserves the right to expand or delete services as necessary and cannot guarantee the amount of work or predict funding for planned projects.
4. No proposal will be considered which stipulates that the City shall guarantee to order a specific service, task or quantity thereof.

N. SUBCONTRACTORS

As used in this RFP, the term “subcontractor” shall also include firms and/or persons either directly or indirectly employed by the Offeror, partners identified in the proposal, and/or others furnished by or acting at the Offeror’s direction or on Offeror’s behalf under the contract.

1. In the event that the Offeror desires to subcontract some part of the work specified in this RFP, the Offeror shall furnish the City the names, qualifications, and experience of the proposed material/key subcontractors and the percentage of the work under any resultant contract to be performed by each with the proposal. In addition, if during the course of the contract, the Offeror wishes to use a subcontractor(s) other than the firms identified in the RFP, advance written notice and approval of the City shall be required. The City reserves the right to reasonably reject the Offeror’s selection of subcontractors.
2. Subcontractors may be used for not more than forty-nine percent (49%) of the work performed unless otherwise approved in advance by the City.
3. The Offeror shall provide services as the Prime Contractor under any resultant contract and subcontractors shall be responsible to the Prime Contractor.
4. The Offeror shall be and remain fully liable and responsible for directing and supervising their subcontractors, all payment to, and their subcontractor’s performance (including acts and omissions) under the contract. The Offeror shall be liable and responsible for their subcontractor’s compliance with all requirements of the contract including but not limited to: insurance, federal, local and state laws, regulations, orders and other legal requirements that are directly or indirectly related to the performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and/or inspections.
5. The Offeror shall not enter into any contract with any subcontractor who has been suspended or debarred from participating in contracting programs by any agency of the United States Government, the Commonwealth of Virginia or other state where the contract is to be performed.
6. The Offeror shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of the contract insofar as they are applicable to the work of subcontractors.
7. Nothing contained in the contract shall create any contractual relationship between any subcontractor and the City.

O. TRADE SECRETS OR PROPRIETARY INFORMATION

1. Trade secrets or proprietary information submitted by an Offeror in response to this RFP shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Offeror must invoke the protection of this section prior to or upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia) for consideration and acceptance by the City as trade Secrets or proprietary information.
2. If the proposal contains any proprietary or trade secret material, such notice must be attached as the first page of the proposal and clearly identify the material/information by some distinct method such as highlighting/underlining or submitted in a separate and clearly labeled section. In addition, the Offeror must (i) indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information and (ii) clearly state the justifiable reason why protection is necessary.
3. Classification of an entire proposal document and/or prices (line item or totals) as proprietary or trade secret is NOT ACCEPTABLE and may result in REJECTION of the proposal.

P. DEBARMENT STATUS

By submitting a proposal, the Offeror (including any partner, associate, or subcontractor associated with the provision of good/services under this RFP) certifies that it is not (1) currently debarred from conducting business or submitting bids/proposals or on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting bids/proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits. For procurements that are to be funded by federal monies, the City will confirm a vendor's status via the Federal Government's Excluded Parties List System (EPLS) which is available at: <http://www.epls.gov>.

Q. AMBIGUITY, CONFLICT OR OTHER ERRORS IN THE RFP

1. If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, it shall immediately notify the City of such error in writing and request modification or clarification of the document. The City will make modifications to material issues by issuing a written revision and will give written notice via addendum posted on the City's website (<http://www.fairfaxva.gov/bid>) and eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (<http://eva.virginia.gov>).
2. The Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the RFP prior to submitting the proposal.

R. TASK ORDER CONTRACT

1. The contract(s) awarded pursuant to this RFP will allow the City to utilize a "basic ordering agreement" for professional engineering services related to transportation on a task-by-task basis. Professional services shall be provided on an "as-needed" basis, as requested by the City. Basic ordering agreement types of contracts for professional engineering services related to construction projects shall not exceed \$500,000 per task, or the sum of all such tasks

performed in one contract term shall not exceed \$5 million (see the Virginia Public Procurement Act § 2.2-4301, 3.a “Competitive Negotiation”).

2. The City will require written Task Order Cost Proposals for individual task orders, to include the Offeror’s hours to perform the work based upon fixed hourly rates contained in any resultant contract (see Standard Provisions, Section 12). Such proposals shall be prepared at no additional cost to the City.
3. Multiple contracts may be awarded so that specific individual tasks may be directed, in the City’s sole discretion, to the Offeror best suited for that particular assignment.

S. CONTRACT DOCUMENTS

1. This RFP, including all addenda, attachments, exhibits and/or appendices hereto, shall become a part of any contract that may be awarded inclusive of any terms, conditions and/or provisions that may be changed, added to, deleted, or modified as may be agreed to between the City and the Offeror during negotiations.
2. Other documents which shall be become a part of any resultant contract include but are not limited to:
 - a. Offeror’s proposal and any modifications accepted by the City.
 - b. Proposal clarifications; responses to questions/issues.
 - c. Documents submitted in conjunction with oral discussions/presentations
 - d. Memoranda of Negotiations including cost proposal.
3. EXCEPTIONS – This RFP contains terms and conditions the City favors and intends to use in any resultant contract. The City reserves the right to negotiate any and all terms, conditions, prices and/or exceptions as may be in its best interest.
4. There is no binding agreement, no contractual relationship, no understanding nor mutual assent until a contract is signed, executed and exchanged by and between the Offeror and the City or until a Purchase Order is issued and accepted
5. The contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The contract may be amended or modified only by written modification.

T. PROPOSAL PREPARATION

1. Before submitting a proposal, the Offeror must read the entire RFP. Failure to read any part of this RFP shall not relieve the Offeror of its contractual obligations.
2. The RFP cover page must be completed as required, signed in ink by Offeror’s representative with the AUTHORITY TO BIND OFFEROR FIRM IN A CONTRACT, and returned with the proposal.
3. All information requested must be submitted. Proposals which are substantially incomplete or lack key information may be rejected by the City at its discretion. Proposal contents should be arranged in the same order and identified with headings as presented herein.

4. The City reserves the right to accept or reject all or any part of proposals, waive minor technicalities/informalities and award the contract to the most qualified and best suited Offeror to best serve the interest of the City.
5. Failure to submit all information requested may result in the Project Analyst requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the City at its discretion.
6. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of context. Unnecessarily elaborate proposals, brochures of other presentations, expensive paper, bindings, visual and other presentation aids beyond that sufficient to present a complete and effective proposal are neither required nor desired.
7. Each copy of the proposal should be bound in a single volume. The City encourages the use of recycled products, therefore, it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.
8. Unless otherwise necessary, all pages of the proposal should be printed on 8 ½" x 11" paper, with type no smaller than 12 font size or equivalent.
9. The City will not consider information other than the materials provided in a duly submitted proposal and/or subsequent interviews for proposal evaluation purposes.

U. PROPOSAL SUBMISSION REQUIREMENTS

1. Specific Requirements

- a. Offerors are required to submit four (4) complete hard copy proposal packages consisting of one (1) original (clearly marked as such on the cover of the proposal package) and three (3) copies of each proposal to include the information and format described herein. Proposals should not exceed 50 pages (with double sided pages counting as 2 pages).
- b. In addition to the hard copies, each Offeror shall submit one (1) a searchable, indexed PDF copy of their complete proposal on CD in the proposal package.
- c. If the proposal contains proprietary or confidential information in accordance with the section "Trade Secrets or Proprietary Information" herein, the Offeror shall also submit one (1) separate, sealed redacted hardcopy of the proposal along with a separate, redacted version of the searchable, indexed PDF both clearly marked as such.
- d. The CD(s) shall be clearly marked with the RFP number, Firm's name, date of proposal and redacted ID if applicable.
- e. The hard copy proposal shall be the Offeror's "official" proposal and shall meet all requirements for submission by the due date and time specified herein. The CD copy will not be accepted in lieu of the hard copy proposal.

2. Proposal Content

Proposal contents shall be arranged in the same order and identified with headings as presented herein. The City encourages the use of recycled products, therefore, it is urged that Offerors submit proposals on paper made from or with recycled content and be printed on both sides. Exceptions to the 50-page proposal package limit are noted below.

Each section should be separated by tabs, clearly labeled and with pages numbered.

a. Title Page

Include the RFP number, RFP name, name of Offeror/Firm, address, telephone number, and date of preparation. Provide name, telephone number and email address of person to contact regarding proposal questions or issues.

b. Table of Contents

List the material included in the proposal by section, including all items set forth below. All pages are to be numbered and indicate Offeror's name.

c. Tab 1 - Signed Offer

First Page of this RFP completed and signed in ink by person authorized to bind the company. Also include under Tab 1:

- (1) Any RFP Addenda (dated & signed).
- (2) RFP Attachment A "Proof of Authority to Transact Business in Virginia and/or exceptions for VA SCC Business Registration or Offeror's license(s) if applicable.
- (3) Identification of any Proprietary Information (see Section P 2).

NOTE: The information in Tab 1 is not included in the 50-page limit.

d. Tab 2 - Executive Summary/Overview

- (1) Cover Letter on company letterhead, signed by a person with the authority to enter into contracts on behalf of the Offeror in the amount of the proposal.
- (2) A brief history of the firm, including number of years in business and size of firm. State the location of the office from which the work is to be performed. Identify any other business names, including DBAs used by firm within the past ten (10) years, if applicable. Legal name and organization as registered with the Virginia SCC.
- (3) Offeror's understanding of services sought through this RFP, an explanation of how the Offeror would provide these services, and a description of the underlying philosophy of the Offeror in providing the services.
- (4) Identification of a primary point and/or contract/project manager who will work with the City during the term of any contract.

e. Tab 3 - Qualifications This section should include

- (1) Approach to BOA Contract: Describe the Offeror's management approach to managing a Basic Ordering Agreement contract with multiple Task Orders occurring concurrently.

Describe the work skills and capacity of your team, communication practices, project management practices, and how the Task(s) will fit in with current work demands.

- (2) Statement of Qualifications: Offeror must include a narrative of qualifications related to potential tasks in the contract.
- (3) Quality Assurance: Describe the quality assurance procedures that will be implemented for the BOA Program. Identify who will be responsible for the quality assurance program; who will be checking and coordinating the documents; how often the documents will be checked; and, the proposed method of documenting quality assurance. Discuss the ability of the firm to track and meet schedules. Also, describe the approach to monitoring contract expenses and man-hours to avoid contract cost overruns.
- (4) Firm Organization: Offeror(s) must include an organization chart as well as, a description of organizational and staff experience and resumes of proposed staff.
- (5) Organizational and Staff Experience: Offerors must describe their engineering qualifications and experience to perform the work described in this Request for Proposal. Information about experience should include direct experience with the specific subject matter.
- (6) Related Project Examples: Special notation must be made of at least four (4) similar or related work projects performed. References must include organization names, addresses, and names of contact persons, email addresses and telephone numbers for each reference. These references will be contacted during the evaluation process.
- (7) Personnel: Full-time and part-time staff, proposed consultants, and subcontractors who may be assigned direct work on these tasks and projects should be identified. Information is required which will show the composition of the task or work group, its specific qualifications, and recent relevant experience. Special mention shall be made of direct technical supervisors and key technical personnel, and approximate percentage of the total time each will be available for this project. The technical areas, character and extent of participation by any subcontractor or consultant activity must be indicated and the anticipated sources will be identified.
- (8) Resumes of staff and proposed consultants are required which will indicate education, background, recent relevant experience with the subject matter of the project and years with the firm. Include current telephone numbers and email addresses.

f. Tab 4 - Technical Proposal

A limit of five (5) pages of narrative relating to tasks is preferred.

- (1) Licensing: Submit copies of engineer's licenses as issued by the Commonwealth of Virginia.
- (2) Understanding of the Project/Tasks and Technical Approach
 - Statement and discussion of the engineering requirements as they are analyzed by the Offeror.

- Sample documents, preliminary layouts, sketches, diagrams, other graphic representations, that demonstrate the engineering firm's capabilities and experience to perform the typical tasks anticipated during the period of the contract.
- Offeror should demonstrate an awareness of difficulties in the completion of this undertaking, and a plan for surmounting them. Special attention should be given to methodological issues that will be encountered in such a project.
- Preliminary Work Plan: The Offeror must present a description of how they perform similar projects with flow charts if available. This section should also include detailed descriptions of activities that are to occur, significant milestones, and anticipated deliverables in performing the tasks and similar projects.
- Treatment of the Issues: In this section, the Offeror may also comment if deemed appropriate, on any aspect of the Request for Proposal, including suggestions on possible alternative approaches to the coverage, definition, development, and organization of the issues presented in the "Tasks to be Performed" section, and may propose alternative approaches.

g. Tab 5 - Client References

- (1) Include a minimum of three (3) references, other than the City, from organizations or municipal governments for which the Offeror has performed similar work, within the past three (3) years, to that required herein. These references can be the same as those used under Tab 3.(6).
- (2) For each reference describe the work provided, the date of the beginning of the contract, the length of the contract, dollar value of contract, and a contact person (with telephone number and email address).
- (3) The City may be included in addition to the three (3) requested references.

h. Tab 6 – VDOT and Federal Forms

Include signed VDOT and federal forms as applicable from RFP Attachment D.

i. Tab 7 – Appendices (Optional)

Offerors who wish to submit additional material that will clarify their response may submit optional attachments.

3. General Requirements

- Proposals shall be placed in a sealed, opaque envelope, and clearly marked in the lower left-hand corner with the RFP number, RFP title and the date/time proposals are scheduled to be received. Proposals are to be submitted by mail, courier or delivered in person **ONLY** to the Department of Public Works (the Department) Project Analyst or Project Analyst's designee.

Project Analyst: Pamela Petrie

Management and Project Analyst
Department of Public Works
City of Fairfax
10455 Armstrong Street, Room 200
Fairfax, VA 22030

- b. The Department is open for the receipt of proposal from 8:30 AM until 5:00 PM, Monday through Friday (excluding City holidays). The City is not responsible for deliveries attempted outside of these time periods or misdirected to other offices.
- c. Any proposal received after the proposal due date and time as detailed on the first page of this RFP whether by mail or otherwise, will not be accepted or considered. The time of receipt shall be determined by the time the proposal is signed in at the Department. Offerors are solely responsible for ensuring that their proposal is stamped by the Department's personnel by the deadline indicated.
- d. The City is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, the intra-City mail system or delivery by other means. Offerors are solely responsible for ensuring that their proposal is received and stamped by the Department's personnel by the deadline indicated.
- e. See paragraph U.1.b. above for information on submission requirements for the PDF copy of the proposal.
- f. The City, and its officers, employees or agents will not be responsible for the opening of a proposal envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.
- g. If the City declares administrative or liberal leave, scheduled receipt of proposals will be extended to the next business day after which administrative or liberal leave has been canceled.
- h. Oral proposals or proposals delivered by electronic means such as facsimile and email are not allowed and proposals so delivered will not be considered.
- i. No inquiries, if received by the Project Analyst less than ten (10) business days prior to the date set for the receipt of proposals, will be given any consideration. Any material question or interpretation of a specification or requirement, as determined by the Project Analyst, will be expressed in the form of an addendum, which will be posted on the City's Website no later than three (3) days set for receipt of proposals. Oral answers will not be authoritative.
- j. Offerors are solely responsible for checking the City's Website to insure that they have the most current information regarding the RFP.
- k. All erasures, interpolations, and other changes in the proposal shall be signed or initialed by the Offeror. Carelessness in quoting business terms (i.e., prices), or in preparation of the proposal will not relieve the Offeror of responsibility. When an error is made in extending total prices, the unit price will govern. Offerors are cautioned to recheck their proposals for possible error. Errors discovered after negotiation cannot be corrected, and the Offeror will be required to perform if its proposal is accepted.

- l. The City reserves the right to accept or reject any or all proposals, to waive informalities, and to reissue any request for proposals and to award contracts to multiple Offerors.
- m. Conditional proposals are subject to rejection in whole or in part.
- n. Under no circumstances shall an Offeror, whose proposal has not been awarded, be entitled to any claim for compensation under this RFP.

4. Proposal Submission Covenants

The Offeror's signature on the Proposal Form covenants and certifies acknowledgement and compliance with following:

- a. Fully Informed.

The Offeror acknowledges that it has read this RFP, understands it, has satisfied itself from its own investigation of the conditions to be met and/or products to be provided, fully understands Offeror's obligation, agrees to be bound by this RFP's terms and conditions (except as otherwise explicitly provided in writing), and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information. In addition the Offeror has or will provide properly trained employees, staff, subcontractors (if approved by the City), or other personnel; and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations; that in any manner may affect the cost, delivery, progress, or performance of products and/or work proposed and to be provided under this RFP.

- b. Collusion

In the preparation and submission of this RFP, the Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

- c. Employees Not to Benefit

- (1) To the best of the Offeror's knowledge, no City of Fairfax official or employee having official responsibility for the procurement transaction, or member of his or her immediate family (including spouse, parents or children), has received, been promised, directly or indirectly, or will receive any financial benefit, including but not limited to fees, commission, finder's fee, political contribution or any similar form of remuneration, or other financial benefit of more than nominal or minimal value on account of the act of awarding and/or executing the contract.

If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

- (2) Whenever there is reason to believe that a financial benefit of the sort described in paragraph "(1)" has been or will be received in connection with a proposal or contract, and that the Offeror has failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Offeror to furnish, under oath, answers to any interrogatories related to such possible benefit.
- (3) In the event the Offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Offeror shall address the disclosure of such facts to the City of Fairfax, 10455 Armstrong Street, Fairfax, VA 22030. Relevant RFP Number should be referenced in the disclosure.

d. Licenses and Insurance

The firm submitting the Offeror is licensed and registered to do business in the Commonwealth of Virginia and has the current Offeror's licenses as may be required under this RFP as of the date of Offeror submission. If awarded the contract, the Offeror shall have insurance coverages as specified in section entitled "Standard Provisions", sub-section entitled "Insurance" at the time the work commences and shall submit proof of such insurance to the City as stipulated in that section.

e. Ethics in Public Contracting

The provisions, requirements, and prohibitions as contained in the Act, as amended, pertaining to Offerors, Offerors contractors, and subcontractors are applicable to this RFP. By submitting a proposal, the Offeror certifies that its proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

f. Conflict of Interest

The provisions referenced in the paragraph above entitled "Ethics In Public Contracting" above, supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

g. Employment Discrimination by Consultant Prohibited

During the performance of any resultant contract, the Offeror will conform to the provisions of Section 2.2-4311 of the Act which provides that in every contract over \$10,000.00, the Offeror agrees as follows:

- (1) The Offeror will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Offeror. The Offeror agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (2) The Offeror, in all solicitations or advertisements for employees placed by or on behalf of the Offeror, will state that such Offeror is an equal opportunity employer.
- (3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Offeror will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

h. Drug Free Workplace

In every contract over \$10,000 the following shall apply:

During the performance of any resultant contract, the Offeror agrees to (i) provide a drug-free workplace for the Offeror's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Offeror's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Offeror that the Offeror maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to an Offeror in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

V. PROPOSAL EVALUATION/RANKING CRITERIA

1. All proposals shall be reviewed and evaluated by the City's Selection & Evaluation Committee ("Committee"). Proposals determined not to meet one or more material RFP requirements may be excluded from further consideration.
2. Major factors to be considered in the evaluation may include, but shall not necessarily be limited to the tasks, specifications, and/or requirements referred to in the Scope of Work (Section H) and the criteria set forth below.
 - a. **Qualifications/Credentials of the Firm/Project Team** - Qualifications of firm, duly licensed as required by the Code of Virginia, as a professional engineering firm, with appropriately qualified and experienced personnel necessary to perform the typical tasks identified in the RFP. Demonstrated technical capabilities, professional competence, and qualifications of

the Offeror, project manager/point of contact, key subcontractors and other personnel to be assigned to provide their services in accordance with performance of the typical tasks identified in this RFP. Adequacy of firm's resources available to provide the services for the contract within the time, budget and operational constraints that may be present.

- b. **Depth of response of the technical specifications, including approach and methodology** of the proposal response as well as project/task understanding and firm qualifications. The quality and performance demonstrated by the sample work products.
 - c. **Proposal Compliance and Presentation** – The quality of the proposal response, including the Offeror's responsiveness and extent to which the proposal meets the requirements of the RFP. Innovative solutions, recommendations as well as exceptions to requirements and/or contract language will also be considered.
 - d. Offerors may be required to give an oral presentation of their proposal to the City. This will provide an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session and may or may not include the opportunity for initial negotiations should the City so determine. Oral presentations are strictly at the option of the City and may or may not be conducted. Therefore, proposals should be comprehensive, competitive and complete.
 - e. **Client References (Experience in Similar Type of Services)** – Previous client evaluations and references from other commercial and/or governmental entities shall be considered to include documented experience in performing and completing similar tasks/services for other governmental and/or commercial clients in a professional, efficient and timely manner.
- 3. **Rating Criteria** – The Committee will evaluate the responses of all Offerors based on the criteria above to create a short list of those deemed responsible and most qualified to perform the work.
 - 4. **Overall Reasonableness Of Costs** – Although fees ARE NOT to be submitted with the initial proposal response, such proposed non-binding and/or binding fees may be considered for those firms involved in the discussion and negotiation phases of the selection process.
 - 5. In addition to evaluating the Offeror's proposal as submitted, the City may make such reasonable investigations and evaluations as deemed proper and necessary to determine the ability/capability of the Offeror to perform the services/furnish the goods. Such investigations may include on-site visitations to inspect and/or assess the Offeror's physical facilities and other capabilities; documentation that Offeror is licensed under applicable laws of the Commonwealth of Virginia; certification of other Offeror claims; and/or contract references. The Offeror agrees to cooperation and shall furnish to the City all such reasonable information/data and/or access for this purpose as may be requested.

The City reserves the right to: (1) evaluate the Offeror's fiscal responsibility and request a copy of a current Dunn and Bradstreet "Business Information Report", other equivalent independent study which includes an in-depth analysis of the Offeror's financial position, business overview, products and services, history, executives, etc., (if available), and/or the Offeror's last two audited financial statements and/or other applicable data; (2) make on – site visitations to inspect and/or assess the Offeror's physical facilities and other capabilities to satisfy questions regarding the Offeror's capabilities, (3) request documentation that Offeror is licensed under applicable laws of the Commonwealth of Virginia, and/or (4) request certification of other Offeror

claims and contact references provided in the proposal as well as others for whom the Offeror has provided services.

The City further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fail to satisfy the City that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

W. PRESENT/DEMONSTRATION

1. If in the City's opinion, Offeror presentations or demonstrations of the Offeror's proposed services and/or system's features and capabilities are warranted, the City will notify the appropriate Offerors. Such presentation or demonstration will be at a City site at a date and time mutually agreed to between the City and Offeror and will be at the Offeror's expense.
2. Presentations are strictly at the option of the City and may or may not be conducted. Therefore, proposals should be comprehensive and complete.

X. CONTRACT AWARD

1. Following initial evaluation of the written proposals as submitted and other information gathered to date, the City will make selection of Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the factors involved in the RFP. The City may request the selected Offerors to make oral presentations.
2. The City shall engage in individual discussions with two (2) or more Offerors it deems to be fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence to provide the required services. Repetitive informal interviews are permissible. Offerors will be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed contract, as well as alternative concepts. At the discussion stage, the City may request and discuss non-binding fee schedules and/or total project costs including man-hours or costs for services.
3. At the conclusion of discussions, on the basis of the evaluation criteria so stated in the RFP and all information developed in the selection process to this point, the City shall select in the order of ranking two (2) or more Offerors whose professional qualifications and proposed services are deemed most meritorious.
4. Negotiations shall then be conducted, beginning with the highest ranked Offeror. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked highest shall be formally terminated and negotiations conducted with the Offeror ranked next highest, and so on until a contract is awarded at a fair and reasonable price. Alternately, the City may elect to cancel this RFP and make no award.
5. Multiple Awards - if the City chooses to award contracts to more than one qualified firm, it will negotiate and award to each Offeror sequentially following the procedures set out in 1-4 above.
6. Should the City determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

7. The City reserves the right to conduct a cost or price analysis for any proposed procurement. If only one proposal is received in response to the RFP or the City otherwise determines that there is insufficient competition, a cost proposal and analysis of three (3) contracts, if available, awarded to the Offeror within the past two (2) years may be requested of the single Offeror. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.
8. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the RFP and the Offeror's proposal as negotiated.
9. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the City, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion.
10. Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award (Code of Virginia, §2.2-4342D). The Proposal Evaluation results shall remain confidential until after the Notice of Contract Award and contract execution with the successful Offeror(s). Properly designated proprietary information from competing Offerors shall not be disclosed to the public or competitors, except as may be required by law.
11. All awards for professional services over \$20,000 are contingent upon City Council approval.
12. Public announcement of an award or intent to award will be posted on the City's website.
13. The City is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous or otherwise debrief any Offeror.

Y. PROTEST OF AWARD OR DECISION TO AWARD

Any Offeror may protest the award or decision to award only in accordance with the provisions of the Act, and only if such is provided for in such Code section.

Z. COOPERATIVE PROCUREMENT

1. As authorized in Section 2.2-4304 of the Act, this procurement is being conducted on behalf of other public bodies. Except for contracts for architectural or engineering services and certain construction contracts over \$200,000, any resultant contract may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Offeror at the same prices and/or discounts and terms.
2. Each jurisdiction and/or political subdivision has the option of executing a separate agreement with the Offeror after making their own legal determination as to whether the use of the contract is consistent with their laws, regulations, and other policies. Such other contracts may contain general terms and conditions unique to those jurisdictions and/or political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the Offeror, the Offeror may withdraw its extension of the award to that public body or political subdivision.

3. It is the responsibility of the Offeror to notify the jurisdictions and/or political subdivisions of the availability of any contract resulting from this RFP.

AA. TAX EXEMPTION

The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption registration number A-212973 applies. Such Certificate will be furnished upon request. The price offered must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, an Offeror may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the City. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

BB. ORDER OF PRECEDENCE

1. In the event that there is a conflict between any specific terms, conditions and/or provisions of this RFP, the specific provisions of the RFP shall take precedence over the "Standard Provisions" which shall take precedence over the "General Conditions and Instructions to Offerors" sections herein.
2. In the event there is a conflict between any specific terms, conditions and/or provisions of contract documents resulting from this RFP, the contract shall take precedence over the Request for Proposals which shall take precedence over the Offeror's response to the Request for Proposals unless otherwise stipulated in the contract.
3. For tasks or projects funded by any Federal Government agency, in the event there is a conflict between the specific terms, conditions and/or provisions of any contract documents resulting from this RFP and the terms, conditions and/or provisions of such agency, that agency's terms, conditions and provisions shall take precedence.

CC. VDOT AND/OR FEDERAL GOVERNMENT CONTRACT REQUIREMENTS

If any purchase order, task(s) or task order under any contract resulting from this RFP is to be funded in whole or in part by the Virginia Department of Transportation (VDOT) or any Federal Government funding source, the Offeror shall comply with supplemental terms and conditions, including the utilization of Disadvantaged Business Enterprises (DBEs), if required by VDOT and/or any such Federal Government agency for such applicable tasks and/or projects.

For supplemental requirements for VDOT/Federal Government funded projects for which the City has a reasonable knowledge, see Attachments B, C, D and E herein. The City also reserves the right to amend the contract, as is permitted, for inclusion of such terms, conditions and provisions.

For each purchase order, task or task order issued under the contract to be funded by VDOT or Federal Government sources, the City will establish and notify the Offeror of the funding source and the Offeror shall comply with the associated requirements.

Necessary specifications, provisions and clauses in Federal and/or VDOT documents, including but not limited to the most current versions of the *Virginia Department of Transportation Road and Bridge Specifications*, *Virginia Department of Transportation Road and Bridge Standards*, and the *Virginia Work Area Protection Manual* are incorporated herein by reference and made a part hereof.

DD. CITY OF FAIRFAX STANDARD PROVISIONS

Section Headings: The headings of the sections in the “Standard Provisions” and/or “General Conditions and Instructions to Offerors” are inserted for convenience only and are not intended to affect the meaning or interpretation of this RFP or any resultant contract.

1. Authority to Transact Business in Virginia

An Offeror organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a contract with the City pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the contract. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

2. Choice Of Law and Courts

Any contract resulting from this RFP is made, entered into, and shall be performed in the City of Fairfax, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in the General District Court or in the Circuit Court of the County of Fairfax, Virginia.

3. Compliance With Laws

The Offeror shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Offeror's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections.

4. Authorized Dealer/Distributor Responsibilities

The Offeror, as the manufacturer or an authorized dealer/distributor of the products specified in the RFP, hereby transfers all rights, including software rights, licenses and documentation to the City upon product acceptance.

5. Procedures

The extent and character of the services to be performed by the Offeror(s) or products delivered shall be subject to the general control and approval of the City's Project Manager assigned under the contract, Director of Finance or his/her authorized designee(s). The Offeror shall only comply with requests and/or orders issued by the Project Manager or the Project Manager's authorized designee(s) acting within their authority for the City.

All communications between the parties relating to material contractual issues shall be through the Project Manager and any material change to the contract must be approved in writing by the Project Manager and the Offeror to be deemed binding.

6. Key Personnel/ Project Staff

Any personnel named in the offer details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the solicitation. No diversion or replacement may be made without advance written notice to the Project Manager and submission of a resume of the proposed replacement for review and approval by the City.

No substitutions, additions or cancellations, including those of key personnel, are permitted after contract award without written approval by the City's Director of Finance or his/her designee. Where specific employees are proposed by the Offeror for the work, those employees shall perform the work as long as those employees work for the Offeror, either as employees or subcontractors, unless the City agrees to a substitution. Requests for substitutions shall be reviewed, including submission of a resume for the proposed replacement, for approval approved by the City at its sole discretion.

The City will, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Offeror. If the City reasonably rejects staff or subcontractors, the Offeror must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Offeror's employees shall be the sole responsibility of the Offeror.

Where required, personnel used by the Offeror to perform under the contract shall be licensed and certified as required by the Virginia Board for Contractors. Offerors shall submit evidence of licensing, trades certification and training within five (5) calendar days of the City's request. The City reserves the right to reject any of Offeror's service personnel who, in the City's judgment, are not adequately qualified to perform the work.

7. Purchase Orders

Offeror shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract.

Any purchase order issued by the City which references this RFP or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this RFP or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

Except as provided herein, Offerors providing goods or services without a signed City purchase order, do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Project Analyst.

In case of an emergency as defined by the City Project Manager, or other authorized representative, the Offeror shall cooperate to the extent reasonably requested with the understanding that a Purchase order will follow.

8. Work Site Damages

Any damage to property, whether owned by the City or others, resulting from work performed under the contract, shall be repaired or replaced to the City's satisfaction at the Offeror's expense. Offeror shall immediately notify City of any such damages.

9. Ownership of Material/Products

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the RFP shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act. All work under the contract, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the City.

10. Use Of Information

Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Offeror under the contract or in contemplation of this agreement, or that Offeror comes in contact with on City premises or under City control shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Offeror free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Offeror and City in writing. Unless approved in writing by the Director of Finance, the Offeror may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Offeror under the final contract.

11. Workmanship, Inspection and Acceptance

Insofar as possible, the Offeror, in carrying out its work, must employ such methods or means as will not cause interruption of or interference with the work of any other contractor, or City personnel at the site.

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Offeror to remove any employee from work who the City deems incompetent or careless.

The City reserves the right and may, from time to time, conduct any test and/or make inspections of the work performed, being performed or good delivered or being delivered under the contract. Any inspection by the City does not relieve the Offeror from any responsibility regarding defects or other failures to meet the contract requirements. The presence of an authorized City representative or agent ("Inspector") shall not lessen the obligation of the Offeror for performance in accordance with the contract requirements, or be deemed a defense on the part of the Offeror for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance

of any such defective work or material. Notification of an omission or failure will be documented by the Department.

If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or replacement at Offeror's expense. Goods rejected upon receipt remain the property of Offeror. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

Nothing in the section shall prohibit or restrict the City's right to return goods not accepted by the City within a reasonable period of time without penalty or restocking fees.

If the City has paid Offeror for all or part of the Services that are ultimately rejected or not accepted by the City, or if the City later determines that Offeror's performance of Services was performed in a manner that breached the terms of this Agreement, Offeror shall (in addition to any other remedy available to City) return to City all amounts paid for such Services.

12. Task Order Cost Proposals

The City may require the Offeror to provide a cost proposal for an individual task order to include the Offeror's hours to perform the work based upon their fixed hourly rates contained in any resultant contract. The cost proposal shall also contain the Offeror's costs separated by task; detailed subcontractor costs; a narrative describing work to be performed and the estimated time for completion and other details as may be required by the City. After review and acceptance of the task order proposal, the City will issue a purchase order to perform the work. The City may issue an Authorization to Proceed letter, signed by a duly authorized City representative. The proposal shall be prepared at no additional cost to the City.

When the scope of services for the task order involves work of such a nature that the Offeror cannot reasonably estimate the time which would be required to provide the services, the City may, at its sole option, agree to an Hourly Rate Purchase Order based on the actual hours worked times the hourly rates indicated in the Offeror's binding fee schedule and other approved expenses. A maximum Purchase Order fee or cost not to exceed limitation shall be agreed upon for Hourly Rate Purchase Orders. When an Hourly Rate Purchase Order is used, the Offeror shall submit detailed time records, documentation for other expenses, and such other evidence as the City may require to support the Offeror's billing request.

For services required by the City that are not specifically identified in the Contract Fee Schedule but covered under the scope of the contract, the Offeror shall submit to the City Project Analyst, in the task order cost proposal, the detailed costs for these services.

Any Offeror time shall only be payable for on-site time. Any overtime rates require advance written notice and approval of the City. Such approved overtime rates shall only apply after forty (40) hours of work per week.

Architectural or professional engineering services related to construction projects shall not exceed \$500,000 per task, or the sum of all such tasks performed in one contract term shall not exceed \$5 million

13. BPOL License Requirement

Offeror shall be licensed in accordance with the City's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. All questions regarding the BPOL license requirement and tax should be referred to the Office of the Commissioner of the Revenue, 10455 Armstrong Street, Room 224, Fairfax, Virginia 22030, Phone: (703) 385-7880, Fax: (703) 359-2499.

14. Payment Terms

Payment will be made to the Offeror once each month based upon satisfactory and actual services rendered and/or goods received and invoices submitted by Offeror. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Offeror's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Offeror shall provide complete cooperation during any such investigation.

Payment terms shall appear on Offeror's invoice. Any discount period shall be computed from the date of proper receipt of the Offeror's correct invoice. Late payment charges shall not exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act (1% per month).

The City reserves the right to withhold any or all payments or portions thereof for Offeror's failure to perform in accordance with the provision of the contract or any modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

The City may pay some or all invoices via Purchase Cards (MasterCard) if the Offeror is willing to accept this form of payment.

15. Invoicing

All invoices to the City shall reference the applicable Purchase Order number and be submitted by the Offeror to the name and address on the Purchase Order unless otherwise directed by the City.

The prices and payments shall be full compensation for the goods, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the goods and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Offeror's form(s) shall be deemed deleted.

Invoices for final payment shall be submitted within thirty (30) days after completion and acceptance of the work or acceptance of the goods unless otherwise specified in the contract or mutually agreed upon in writing.

The City will not honor, process or pay invoices submitted by subcontractors.

16. Changes

The City may, at any time, by written order, require changes within the general scope of the services to be performed or the products to be provided under contract.

If such changes cause an increase or decrease in the Offeror's cost of, or time required for performance of any services or provision of products under the contract, within fifteen (15) days (or other mutually agreeable time period) of receipt of a change order, the Offeror shall submit a written proposal for any equitable adjustment to the contract price, delivery schedule, or both. Upon mutual agreement, authorized representative of the parties shall then agree to and sign such modification to the purchase order or contract. Offeror's receipt and performance of a Purchase Order detailing such changes shall be deemed acceptance.

The Offeror shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the City and the Offeror or associated Purchase Order received. No products or services for which an additional cost or fee will be charged by the Offeror shall be furnished without the prior written authorization of the City.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the items/services in question and make such arrangements as may be deemed necessary to complete the work.

No payment shall be made to the Offeror for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Offeror shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

17. Additions/Deletions

The City reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract by contract amendment. The City and the Offeror will mutually agree to prices for items/services to be added to the contract and/or reduction in overall costs for items/services deleted.

18. Safety

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Offeror and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to the contract.

Offeror(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under the contract. The City has sole right to dismiss contractors and/or subcontractors for non-compliance to the above rules and regulations and/or safety violation. The Offeror must rectify all safety concerns prior to continuance of work.

19. Communications

At least one on-site worker who has supervision authority must be conversant in the English language. This is necessary because of the need to provide job instructions, ensure compliance with safety regulations and communicate with City staff and/or other contractors on site. The City shall be sole judge of the communication level of the Offeror's employees. Failure to have an English- speaking worker on each job is cause to halt work until the situation is remedied. Should this happen, it shall be at no additional cost to the City.

20. Warranties and Guarantees

Offeror warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

Offeror represents and warrants that all products will be new, free from defects in material or workmanship and will conform to, comply, function and perform in accordance with the requirements and specifications, and that Offeror will make all necessary adjustments, repairs and replacements to maintain all goods in such condition during the term of the applicable warranty, in accordance with the terms and conditions hereof. Unless otherwise specified, such adjustments, repairs and replacements will be provided at no additional cost to the City during the applicable warranty term. Offeror further warrants that each product furnished under the contract will perform such general and specific operations and have such general and specific characteristics as described and claimed for them in any of Offeror's published literature, descriptions and specifications whether or not such literature, descriptions and specifications are included in or referenced by a Purchase Order or this Agreement.

All warranties shall survive inspection, acceptance and payment.

Offeror's and/or manufacturer's warranty shall cover all parts and factory labor. Any warranty specified by the Offeror shall not act to void longer guarantees given by the manufacturer of the equipment or its components.

The Offeror agrees to: furnish services described in the RFP and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

The City's approval of designs or specifications furnished by Offeror shall not relieve the Offeror of its obligations under this warranty.

All periods of warranty, and periods of manufacturers' product and/or equipment warranties shall commence on the date of Acceptance of the Work and shall extend for a minimum period of one year thereafter

21. Default

In case of failure to deliver products, to meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Offeror responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

22. Contract Disputes Resolution

Arbitration shall not be applicable for the resolution of disputes between the City and the Offeror. Disputes by the Offeror with respect to the contract shall be decided in the first instance by the City's Director of Finance. The Director of Finance will, after receipt of a letter from the Offeror addressed to the Director of Finance detailing the nature of the dispute, pertinent facts, and the Offeror's desired outcome, reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Offeror. This decision shall be final and binding unless, within twenty (20) days from the date of such decision, the Offeror submits or otherwise furnishes and the Director of Finance receives a written appeal addressed to the Director of Finance and City Manager. The decision by the City Manager shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision of the Director of Finance, the Offeror shall proceed diligently with the performance of the Agreement in accordance with that decision.

Contractual claims, whether for money or other relief, shall be submitted by Offeror in writing no later than sixty (60) days after final payment; however, written notice of the Offeror's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Any notice or dispute shall be delivered to the Director of Finance, 10455 Armstrong Street, Fairfax, Virginia 22030, and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested.

The Offeror may not institute legal action until all statutory requirements have been met or prior to receipt of City's decision on the claim.

Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Any notices to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip from that person.

23. Termination

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

In every such event in which the City shall terminate the services of the Offeror, the Offeror is obligated and agrees to refund the City any and all monies paid (including advance payments) to it by the City for products not delivered and/or services not rendered by said Offeror as of the date on which Offeror shall receive Notice of Termination.

The City may exercise the City's right of setoff as to any amounts the City may owe the Offeror. The City may require Offeror to transfer title and deliver to the City any or all items produced or procured by Offeror under the contract for performance of the work terminated.

a. Termination for Convenience

The City may cancel and terminate the contract in part or in whole, without penalty for its convenience. Any such termination shall be effected by delivery of a written Notice of Termination to the Offeror at least ten (10) business days prior to the effective date. After receipt of a notice of termination, the Offeror must stop all work and deliveries under the purchase order/contract on the effective date and to extent specified in the notice. However, any termination notice shall not relieve the Offeror of the obligation to deliver and/or perform on all outstanding orders issues prior to the effective date of the termination. A reasonable, equitable adjustment in the contract price shall be made for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract at any time, without penalty, by written notice to the Offeror for: (1) cause, default, or negligence ("default") on the part of the Offeror; or (2) if the Offeror should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Offeror's insolvency ("bankruptcy"). In the case of termination for cause, advance written notice by the City is not required. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default or bankruptcy, and the Offeror shall be liable for all damages to the City resulting from Offeror's default or bankruptcy.

In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the appropriate City authority. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by the contract is spent, whichever event occurs first, and the Offeror shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

24. Delays/Service Failure

Failure of the Offeror to deliver products or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected products/services when so requested, immediately or as directed by the City, shall constitute authority for the City to purchase in the open market products/services of comparable grade/quality to replace the services, products rejected, and/or not delivered. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.

If delay is foreseen, the Offeror shall give thirty (30) days prior written notice to the designate City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Offeror must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Offeror.

25. Indemnification

The Offeror agrees to indemnify and hold harmless the City of Fairfax, Virginia, its officers, agents, and employees from any liability, claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the Offeror on the materials, goods or equipment delivered. The Offeror agrees to protect the City from claims involving infringement of patent or copyrights.

Offeror expressly understands and agrees that any performance bond or insurance protection required by the contract, or otherwise provided by the Offeror, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

The Offeror shall also save the City, its officers, agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Offeror is not the patentee, assignee, licensee or City.

The Offeror shall protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery; furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible and protect the City from loss or damage to City owned property while it is in the custody of the Offeror.

If the Offeror uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

26. Insurance

- a. The Offeror will maintain a general liability policy with \$1,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in

the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurer must list the City as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient.

- b. The Offeror will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. As an alternative, it is acceptable for the contractor to be insured by a group self insurance association that is licensed by the Virginia Bureau of Insurance. The contractor will also carry employers liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee.
- c. The Offeror will maintain automobile liability insurance with limits of at least \$1,000,000. The coverage is to be written with a symbol "1". The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better.
- d. The Offeror will maintain professional liability insurance with a limit of at least \$1,000,000. It is preferred that the coverage be on an occurrence basis. If the policy is on a claims made basis, this should be noted. If the Offeror has professional liability insurance on a claims made basis, agreement must be made that coverage will be maintained for at least three years beyond the expiration date of the policy in force at the time of the contract. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better. The City should be listed as an additional insured on the policy. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient. (NOTE: This is only needed when professional services are being conducted by the Offeror. For example if the Offeror is providing professional advice or design work, the professional liability coverage should be required.)
- e. The Offeror will maintain builders risk coverage on a replacement cost basis for the duration of the contract. The limit will be the full replacement cost of the building and/or structures being built under the contract. The City will be listed as an insured under this policy to protect any property owned at the construction site. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better. (NOTE: This is not needed when repair work is being conducted. Also, the City may wish to add this exposure to their own property policy in lieu of requiring the Offeror to maintain the builders risk policy.)
- f. The Offeror will maintain a surety bond in an amount not less than the total amount payable to the contractor for the terms of the contract. The bond will be issued by a company licensed to issue surety bonds in the Commonwealth of Virginia and has an A. M. Best rating of A- or better. (NOTE: A surety bond is not needed for short term or low value contracts.)

With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage. All wording limiting the insurer responsibility to notify the City of any cancellation or non renewal of the coverage must be removed.

27. Correspondence

All communications between the parties relating to material contractual issues shall be through the Project Analyst and must be in writing to be deemed binding.

28. Quality

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All products provided shall be new, not refurbished, free of material cosmetic defects, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated herein. Products shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices.

All products and services shall meet the then current applicable local, state and federal rules and guidelines.

29. Brand Name Or Equivalent Items

Unless otherwise specified herein, the name of a certain brand, make or manufacturer does not restrict Offerors to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the product desired, and any product which the City, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, will be accepted.

30. Bonding/Contract Security

The City reserves the right to require a proposal, performance, and/or payment bond for contracts for goods or services if specified in this RFP in accordance with sections § 2.2-4336. "Bid Bonds," § 2.2-4337 "Performance and Payment Bonds" and other related sections of the Act. In such case, the successful Offeror shall bear the cost and be required to furnish such bid, performance, and/or bond in the specified amount with the bid and/or before award of contract, as applicable. The parties shall mutually agree upon the form of the bond document/agreement. If no bond can be furnished by the successful Offeror, the City reserves the right to award the contract to the next most highly qualified and responsible Offeror in the best interest of the City.

31. News Release/Publicity By Consultants

As a matter of policy, the City does not endorse the products or services of a consultant. News releases or other publicity concerning any resultant contract from this RFP will not be made by a consultant without the prior written approval of the City. All proposed news releases will be routed to the City Clerk for review and consideration of approval.

32. Emergency Purchases

If the Offeror is unable to provide the required service for any period of time, except as provided in the Section "General Terms and Conditions," paragraph entitled "FORCE MAJEURE", the Offeror is

responsible for providing a backup service, satisfactory to the City, to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Offeror be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Offeror.

33. Americans With Disabilities Act Requirements

The City is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Your acceptance of any contract resulting from this RFP acknowledges your commitment and compliance with ADA.

34. Immigration Reform And Control Act

By entering into a written contract with the City, the Offeror certifies that the Offeror does not, and shall not, during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as amended.

35. Virginia Freedom Of Information Act

All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

36. Funding

A contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

37. Assignment

The Offeror shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under the contract, without the prior written consent of the City.

If the Offeror desires to assign his/ her right to payment of the contract, Offeror shall notify the City's Director of Finance immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Offeror from his or her obligations or change the terms of the contract.

38. Force Majeure

Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

39. Record Retention/Audits

The Offeror shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three (3) years from the completion of the contract. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Offeror's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments, and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Offeror's normal working hours. City personnel or designee may perform in-progress and post-audits of the Offeror's records.

40. Payments To Subcontractors

Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Offeror shall either:

- a. a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
- b. b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Offeror shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Offeror shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Offeror's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

41. Time Of The Essence

Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.

42. Reports

The Offeror must submit status reports as requested and appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.

43. Antitrust

By entering into a contract, the Offeror conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Offeror may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said contract.

44. Relationship of the Parties

The Offeror will be legally considered and acting solely as an independent consultant and neither the Offeror nor its employees or subcontractors will, under any circumstances, be considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Offeror, its servants or agents. The City will not withhold from the contract payments to the Offeror any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Offeror. Further, the City will not provide to the Offeror any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the RFP or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

45. Severability

The sections, paragraphs, sentences, clauses and phrases of the contract are severable, and if any phrase, clause, sentence, paragraph or section of the contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of the contract.

46. Non-Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract agreement, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the Client of any rights, remedies or options provided

hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

47. Non-Exclusive Market Rights

It is expressly understood and agreed that except as otherwise specifically provided, the contract neither grants to Offeror an exclusive privilege to sell or provide to the City any or all goods or services of the type described in the contract which the City may require, nor does it require the purchase of any goods or services from Offeror by the City. Offeror understands and agrees that the City is free to and may contract with other manufacturers and contractors for the procurement of comparable goods or services.

48. HIPAA Compliance

The Offeror shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

49. Confidentiality And Return Of Records

The Offeror agrees that all findings, memoranda, correspondence, documents or records of any type, whether written or oral, and all documents generated by the Offeror or its subcontractors as a result of the City request for services under the contract, are confidential records ("Record" or "Records"), and neither the Records nor their contents shall be released by the Offeror, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the City's Project Manager or designee. The Offeror agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of the contract shall be referred to the Project Manager or designee for response. At the City's request, the Offeror shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the City's request, shall destroy all computer records created as a result of the City's request for services under the contract.

The Offeror agrees to include the provisions of this section as part of any contract the Offeror enters into with subcontractors or other third parties for work related to work pursuant to the contract.

No termination of the contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

50. Copyright

The Offeror hereby irrevocably transfers, assigns, sets over and conveys to the APS all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to the contract. The Offeror further agrees to execute such documents as the City may request to affect such transfer or assignment.

Further, the Offeror agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in the contract, the Offeror's remedy in the event of termination of or dispute over the terms of the contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of the contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of the contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Offeror for work related to work pursuant to the contract.

51. Data Sources

The City will provide the Offeror with all necessary and available data possessed by the City that relates to the contract. However, the Offeror is responsible for all costs for acquiring other data or processing, analyzing, or evaluating City data.

52. Conflict Of Interest

In the event that a conflict of interest arises with Offeror acting as the City's authorized contractor on a specific job, the City reserves the right to seek professional services elsewhere on the specific job over which the conflict arose.

53. Shipping And Billing

Unless instructed otherwise by the City, Offeror shall, for Purchase Orders placed hereunder: (1) deliver entire quantity of items ordered to the destination designated in the Purchase Order in accordance with any specific shipping instructions; (2) enclose a packing memorandum with each shipment and when more than one package is shipped, identify the one containing the memorandum; (5) legibly mark or label on the outside of the shipping container the City's Purchase Order number, commodity description and quantity on all packages and shipping papers; (6) render itemized invoices showing Purchase Order number to the billing address on the Purchase Order and (7) utilize standard commercial packaging, packing and shipping containers.

Products shall be shipped by Offeror, F.O.B., Destination, from Offeror's nearest facility capable of meeting the City's requirements using the most cost effective common carrier with transportation charges prepaid by Offeror and added as a separate item to the invoice to be paid by the City. In no event will City be liable for premium shipping modes unless previously authorized.

54. Provisions Required By Law Deemed Inserted

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this RFP shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

EE.GENERAL DEFINITIONS, CONDITIONS AND INSTRUCTIONS TO OFFERORS

1. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City, unless otherwise specified.

2. If there is a conflict between the terms and conditions in this “General Conditions and Instructions to Offerors” and the Standard Provisions and/or conditions in other attachments to this RFP, the latter shall take precedence.
- a. DEFINITIONS: The terms defined in this section shall have the meanings set forth below whenever they appear in this RFP regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:
- (1) OFFEROR: Any individual, company, firm, corporation, partnership or other organization providing a proposal in response to a Request for Proposal issued by the Project Analyst and offering to enter into contract with the City.
 - (2) CONSULTANT/CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
 - (3) CITY: City of Fairfax.
 - (4) DAY: Unless otherwise specified “day” or “days” shall mean calendar days
 - (5) GOODS/PRODUCTS: All material, equipment, supplies, printing, and/or automated data processing/information technology hardware and software.
 - (6) INFORMALITY: A minor defect or variation of a proposal from the exact requirements of the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
 - (7) PROFESSIONAL SERVICES: Any type of professional service performed by an independent consultant/contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.
 - (8) PROPOSAL: The offer of a supplier to provide goods and/or services in accordance with general specifications or requirements in a Request for Proposal solicitation (RFP). A proposal is subject to scope and price negotiation.
 - (9) PROJECT ANALYST: The Management and Project Analyst employed by the City of Fairfax, Virginia or his/her designee.
 - (10) REQUEST FOR PROPOSAL (RFP): A request which is made to prospective suppliers (Offeror) for a proposal. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.
 - (11) RESPONSIBLE OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.

- (12) SERVICES: Any work performed by an independent contractor/consultant wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
- (13) SOLICITATION: as applicable, the RFP or process of notifying prospective Offerors that the City wishes to receive proposals on a set of requirements to provide goods or services.
- (14) STATE: Commonwealth of Virginia.
- b. LEGAL ACTION: No Offeror, potential Offeror, or subcontractor shall institute any legal action until all statutory requirements have been met.
- c. CONDITION OF COMMODITIES: All items proposed shall be new, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in proposal invitation/proposal request. Verbal agreements to the contrary will not be recognized.
- d. SAMPLES: Samples, if required, must be furnished free of expense to the City on or before date specified; if not destroyed in examination, they will be returned to Offeror, if requested, at Offeror's expense. Each sample must be marked with the Offeror's name and address, City's request number and opening date. DO NOT ENCLOSE IN OR ATTACH PROPOSAL TO SAMPLE.
- e. FORMAL SPECIFICATIONS When an RFP contains a specification which states no substitutes, no deviation therefrom will be permitted and the Offeror will be required to furnish articles in conformity with that specification. The Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.
- f. FEDERAL SPECIFICATIONS Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).
- g. COVENANT AGAINST CONTINGENT FEES The Offeror warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Offeror for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend the contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- h. LABELING OF HAZARDOUS SUBSTANCES - If the items or products requested by this RFP are "Hazardous Substances" as defined by 10.1-1400 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the Offeror, by

submitting his proposal, certifies and warrants that the items or products to be delivered under the contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products that the Offeror does not violate any of the prohibitions of Sec. 10.1-1400 et seq., or the Code of Virginia or Title 15 U.S.C. Sec. 1263. Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the proposal or delivered materials for each chemical and/or compound offered.

- i. MATERIAL SAFETY DATA SHEETS: Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the proposal or delivered materials for each chemical and/or compound offered.
- j. SHIPPING - Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Offeror's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.
- k. RESPONSIBILITY FOR SUPPLIES TENDERED Unless otherwise specified in the solicitation, the Offeror shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Offeror shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Offeror promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Offeror within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Offeror at his or her risk and expense or dispose of them as its own property.
- l. COMPLIANCE Delivery must be made as ordered and in accordance with the RFP or as directed by the City when not in conflict with the contract. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Offeror. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Offeror be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the Offeror shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.
- m. POINT OF DESTINATION All materials shipped to the City must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
- n. CONTRACT ALTERATIONS No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
- o. BANKRUPTCY: If the Offeror should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Offeror's insolvency, then the City may without prejudice to any other right or remedy, terminate the contract contractor and procure such goods or services from other sources. In such event, the Offeror shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Offeror shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional

managerial and administrative services shall exceed the unpaid balance of the contract price, the Offeror shall pay the difference to the City.

- p. **SUBCONTRACTING:** If one or more subcontractors are required, the Offeror is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us/>; the Virginia Department of Minority Business Enterprise <http://www.dmbe.state.va.us/>; local chambers of commerce and other business organizations. As part of the contract award, if requested by the City, the Offeror agrees to provide the names and addresses of each subcontractor that subcontractor's status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

Except as otherwise specified in the solicitation, the Offeror may subcontract third party issues performed under the contract, but must submit a written list of those subcontractors, their addresses, personnel who will be performing the work, and a description of the work to be performed to the City prior to the work actually being done. The City must agree to the third party's work and reserves the right to deny the third party access if necessary.

- q. **GENERAL GUARANTY:** The Offeror agrees to:

- (1) Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Offeror is not the patentee, assignee, licensee or City.
- (2) Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- (3) Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- (4) Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the City.
- (5) Protect the City from loss or damage to City owned property while it is in the custody of the Offeror.

- r. **SERVICE CONTRACT GUARANTY:** The Offeror agrees to:

- (1) Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time.
- (2) Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.

- (3) Render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
- (4) Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the proposal for any services not rendered in strict conformity with the contract.
- (5) Stipulate that the presence of a City inspector shall not lessen the obligation of the proposal for performance in accordance with the contract requirements, or be deemed a defense on the part of the proposal for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Project Analyst.

s. SMALL, WOMAN AND MINORITY-OWNED BUSINESS (SWaM):

- (1) The City encourages Small, Woman and Minority-owned business to participate in business opportunities with the City. Contact the Virginia Department of Minority Business Enterprise for information regarding certification and certified businesses: <http://www.dmbe.virginia.gov/>
- (2) Where Federal grants or monies are involved it is the policy of City, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A 102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

FF. AFFIDAVIT OF NO CONFLICT OF INTEREST

RE: RFP No: 14007 - Transportation Planning & Engineering Consultant Services

The undersigned, being duly sworn, hereby affirms and says that no employee, official or elected officer of the City of Fairfax has a proprietary interest in the company, corporation, partnership or other organization furnishing the goods and/or services under the above-referenced proposal, or stands to benefit personally from the furnishing of such goods or services as referenced above. The undersigned hereby further affirms that he or she is fully and duly authorized by appropriate corporate/partnership/limited liability company proceeding to make this oath on behalf of the corporation/partnership/limited liability company.

FIRM: _____

By: _____ (seal)

Name: _____

Title: _____

Date: _____

ATTEST:

Secretary

STATE OF _____

COUNTY/CITY OF _____, To-Wit:

Subscribed and sworn this _____ day of _____, 2013.

Notary Public

My commission expires: _____

Notary registration number: _____

ATTACHMENT A - PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VA

THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL. FAILURE TO INCLUDE THIS FORM MAY RESULT IN REJECTION OF YOUR BID/PROPOSAL

Pursuant to Virginia Code §2.2-4311.2, a bidder/offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid/ proposal the identification number issued to it by the State Corporation Commission ("SCC"). Any bidder/offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the offeror is not required to be so authorized.

Any Bidder/Offeror described herein that fails to provide the required information or for whom such signed exception is not considered valid by the City, may not receive an award unless a waiver of this requirement is granted, in writing, by the City Manager or his designee.

If this bid/proposal for goods or services is accepted by the City of Fairfax, the undersigned agrees that the requirements of the Code of Virginia Section 2.2-4311.2 have been met.

Please check the appropriate line below and provide the requested information:

- ☐ A. Bidder/offeror is a Virginia business entity organized and authorized to transact business in Virginia by the VA SCC; or
- ☐ B. Bidder/offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the VA SCC.

**A or B. Firm's Identification Number
as issued by the VA SCC:**

--

VA SCC ID Number must be provided.

- ☐ C. Bidder/offeror is a Sole Proprietorship and therefore is not required to have a VA SCC number.
- ☐ D. Bidder/offeror does not have an Identification Number issued to it by the SCC and such bidder/offeror is not required to be authorized to transact business in Virginia by the SCC for the following reason(s): (see attached) **Please attach additional sheets of paper if you need to explain why such bidder/offeror is not required to be authorized to transact business in Virginia.**

Legal Name of Company (as listed on W-9)

Legal Name of Bidder/Offeror

Authorized Signature

Date

Print or Type Name and Title

ATTACHMENT B - VARIOUS VDOT REQUIRED CLAUSES

Virginia Department of Transportation (VDOT) and Federal Highway Administration (FHWA) Required Clauses

In the event that there is a conflict between any specific terms and conditions in this Section entitled “VDOT & FHWA Required Clauses” and any other provisions in this RFP, the provisions of this section shall take precedence.

Contract Subject to Federal Financial Assistance/Application of Provisions and Clauses

Contractor/Offeror is responsible for ensuring its compliance with all applicable requirements. Additionally, Contractor/Offeror is responsible for ensuring that subcontractors, at as many tiers of the Project as required, perform in accordance with the terms, conditions and specifications of the contract, including all applicable requirements.

Upon request of the City, Contractor/Offeror shall provide evidence of the steps it has taken to ensure its compliance with the requirements, as well as evidence of the steps it has taken to ensure subcontractor performance, and/or submit evidence of subcontractor’s compliance at all tiers.

The following RFP provisions and required contract clauses will be incorporated by reference in any contract resulting from this RFP issued by the City. These RFP provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this RFP which may also be incorporated by reference in any resulting contract.

Some provisions and clauses require the Contractor/Offeror to execute and submit certain required certifications with the bid/proposal or contract, which are included herein. Failure to execute and submit required certifications with the bid/proposal or contract documents may render a bid/proposal non-responsive or a contract null and void.

Clauses may not be listed in consecutive numerical order as only those provisions and required clauses that apply to the contract/project have been referenced.

CLAUSES APPLICABLE TO A&E CONTRACTS

1. **ENERGY CONSERVATION** - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
Reference - 42 U.S.C. 6321 et seq. 49 CFR Part 18
2. **CLEAN WATER**
 - a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
 - b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
Reference - 33 U.S.C. 1251
3. **LOBBYING** - Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The certificate entitled Certification Regarding Lobbying (Attachment A) must be completed and returned with your bid/proposal.

Reference: 31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20

4. **ACCESS TO RECORDS AND REPORTS** - The following access to records requirements apply to the Contract:
 - a. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- b. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- c. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- d. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- e. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- f. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- g. FTA does not require the inclusion of these requirements in subcontracts.
Reference: 49 U.S.C. 5325; 18 CFR 18.36 (i); 49 CFR 633.17

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a) ² 49 CFR 633.17 ³ 18 CFR 18.36 (i)

5. FEDERAL CHANGES - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Reference: 49 CFR Part 18

6. CLEAN AIR

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Reference: 42 U.S.C. 7401 et seq; 40 CFR 15.61; 49 CFR Part 18;

7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- a. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- b. (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Reference: 31 U.S.C. 3801 et seq; 49 CFR Part 31
18 U.S.C. 1001; 49 U.S.C. 5307

9. TERMINATION

- a. Termination for Convenience or Default - The City may terminate this contract in whole or in part, for the City's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the City, the City's Purchasing Agent shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the City may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

- b. Opportunity to Cure - The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor a reasonable amount of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from City setting forth the nature of said breach or default, City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- c. Waiver of Remedies for any Breach In the event that City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by City shall not limit City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Reference: 49 U.S.C. Part 18; FTA Circular 4220.1E

- 10. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION - The provisions of Part 29 apply to all contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

The certificate entitled Certification Regarding Debarment, Suspension and Other Responsibility Matters (Attachment A) must be completed and returned with your bid/proposal.

Reference: 49 CFR 29.220(b).

- 11. CIVIL RIGHTS - The following requirements apply to the underlying contract:

- a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Reference: 29 U.S.C. § 623, 42 U.S.C. § 2000,
42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132,
49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

12. DISPUTE RESOLUTION - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City's Purchasing Agent. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City Manager with a copy to the Purchasing Agent. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

- a. **Performance During Dispute** - Unless otherwise directed by City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- b. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- c. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, either in the General District Court of the City of Fairfax or in the Circuit Court of the County of Arlington, Virginia.
- d. **Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Reference: 49 CFR Part 18, FTA Circular 4220.1E

13. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal of 6.3 % DBE participation has been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following [concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]:
 - (1) The names and addresses of DBE firms that will participate in this contract;
 - (2) Reference: 49 CFR Part 18, FTA Circular 4220.1E A description of the work each DBE will perform;

- (3) The dollar amount of the participation of each DBE firm participating;
- (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- (5) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- (6) If the contract goal is not met, evidence of good faith efforts to do so.

Offerors must present the information required above prior to contract award] (see 49 CFR 26.53(3)).

Reference: 49 CFR Part 26

14. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Fairfax requests which would cause the City of Fairfax to be in violation of the FTA terms and conditions.

EXECUTIVE ORDER 11246

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As, used in this provision:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.
3. If the Contractor is participating (pursuant to 41 CFR 60 4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, nor the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on the job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin

boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
 - h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60.3.
 - l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor union, contractor community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can

provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner that is even though the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, and sex or nation origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246 as amended.
13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60 4.8.
14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

FHWA MEMORANDUM

U.S. Department of Transportation

Federal Highway Administration MEMORANDUM

Subject: ACTION: The Discontinuance of the FHWA-45, FHWA-47 & FHWA-810

Date: May 22, 2007

From: Is/ Original signed by Dwight Home,

Director Office of Program Administration

In Reply Refer to: HIPA-10

To: Directors of Field Services

Division Administrators

Federal Lands Administrator

Effective immediately, Divisions and/or our State Transportation Agency (STA) partners will no longer be required to submit data to HIPA-10 that is collected as it relates to:

The FHWA-45, Bid Price Data¹,

The FHWA-47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds², and

The FHWA-810, Bid Tabulation Data³

For several years, STAs have commented that the reports generated from the data collection efforts were of little utility and that there were statistical limitations, statistical significance, and accuracy issues with the data which were felt could result in misleading information. There was also a noted reporting burden on States and contractors. The suggestions have often been to eliminate the reporting requirements all together.

In 2003, the GAO conducted a review of the States' highway construction costs. As part of its review, the GAO reviewed FHWA's cost data collection requirements. In its discussions, the GAO also identified similar issues and concerns with the data series as discussed above. In a December 2003 report GAO made recommendations to FHWA to review the usefulness and accuracy and/or under reporting of the data collected.

As a result, FHWA has determined that it is appropriate to discontinue the reporting requirements for the FHWA 45, 47 and 810 as collection of this data for needed reports such as the "Highway Statistics" publication can be collected through other means. The main reasons for this decision are the strong disinterest in the data collection activities and comments provided to us by our STA partners suggesting that we are not collecting the data extensively enough to be of utility. We will also be going through an abridged regulatory update as appropriate to reflect this action.

Please contact Bob Wright, at 202-366-4630, to answer any questions and/or for additional information on this matter.

The FHWA 45, Bid Price Data, was collected on NHS projects over \$500,000. The FHWA 45 served as a means to compute the highway construction bid price index, which is published in

the document "Price Trends for Federal-aid Highway Construction. The data was used in our "Highway Statistics" publication and by other outside sources, including its use by congressional committees in their deliberations on pending new highway legislation.

Involving Federal Funds, was collected on all NHS projects over \$1,000,000. The FHWA 47 served as a means to collect data related to the quantities of materials, supplies and labor used for various types of highway construction. The data reported on this form was used primarily to compute usage factors for these various materials, supplies, and labor. These factors were used to determine the economic impacts of cuts or increases in the cost of Federal-aid highway construction.

FHWA 810, Bid Tabulation Data was collected on all NHS projects. The needs for the FHWA 810 have been to compute national summaries on the largest contract awards and contract size statistics. The data was also used to produce state-by-state summaries on contracts awards, number of bids and average number of bids.

8-13 (SPCN)

It is the policy of the Virginia Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded consultant contracts. A list of Virginia Department of Minority Business Enterprise certified DBE firms is maintained on their web site (<http://www.dmb.state.va.us/>) under the **DBE Directory of Certified Vendors**. Consultants are encouraged to take all necessary and reasonable steps to ensure that DBE firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider DBE firms as potential subconsultants. The consultant is encouraged to contact DBE firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a DBE firm whereby the DBE firm promises not to provide services to other consultants is prohibited. The Department believes that these services support 10% DBE participation.

In accordance with the Governor's Executive Order No. 33, the Virginia Department of Transportation also requires a utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of state funded consultant contracts. A list of Virginia Department of Minority Business Enterprise (DMBE) certified SWaM firms is maintained on the DMBE web site (<http://www.dmb.state.va.us/>) under the **SWaM Vendor Directory** link. Consultants are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the consultant intends to subcontract a portion of the services on the project, the consultant is encouraged to seek out and consider SWaM firms as potential subconsultants. The consultant is encouraged to contact SWaM firms to solicit their interest, capability and qualifications. Any agreement between a consultant and a SWaM firm whereby the SWaM firm promises not to provide services to other consultants is prohibited.

49 CFR Part 26 requires VDOT to collect certain data about firms attempting to participate in VDOT contracts. This data must be provided on the enclosed Firm Data Sheet.

VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. The successful prime consultant will be required to complete C- 63 form for both state and federally funded projects on a quarterly basis.

Any DBE or SWaM firm must become certified (with the Virginia Department of Minority Business Enterprise) prior to your response being submitted. If DBE or SWaM firm is the prime consultant, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by DBE or SWaM subconsultants. DBE or SWaM prime consultants are encouraged to make the same outreach efforts as other consultants. DBE or SWaM credit will be awarded only for work actually being performed by them. When a DBE or SWaM prime consultant subcontracts work to another firm, the work counts toward DBE or SWaM goals only if the other firm is itself a DBE or SWaM. A DBE or SWaM prime consultant must perform or exercise responsibility for at least 30% of the total cost of its contract with its own force.

DBE or SWaM certification entitles consultants to participate in VDOT's DBE and SWaM programs. However, this certification does not guarantee that the firm will obtain VDOT work nor does it attest to the firm's abilities to perform any particular work.

Business Opportunity and Workforce Development (BOWD) Center - The BOWD Center is a VDOT developmental supportive services program and partnering initiative funded by FHWA for selected DBE firms of various skill and competence levels interested in entering, enhancing or expanding highway contracting opportunities with prime consultants. The partnering initiative between prime consultants and BOWD DBE firms provides the opportunity for the further development of DBE firms through performance on contracts and guidance from prime consultants. The intent of this partnering initiative is to increase capacity by perfecting existing skills and knowledge, expanding into new work areas, and prime consultant joint venturing with DBE firms.

The prime consultants are encouraged to achieve all or a percentage of the required DBE participation/goals determined for this project by the utilization of BOWD approved firms. To assist consultants in taking advantage of this opportunity for utilization of approved BOWD firms, please contact the BOWD Center for additional information, details, resources and support. For further information on the BOWD Center and to view the DBE profiles, go to www.virginiadot.org/business/BOWD.asp . The BOWD Center can be contacted at (804) 662-9555 or via email to BOWDCenter@vdot.virginia.gov.

I. FIRM DATA SHEET - Virginia Department of Minority Business Enterprise

Funding: ____ (S=State F=Federal)

Project No.: _____

Division: _____

EOI Due Date: _____

The prime consultant is responsible for submitting the information requested below on all firms on the project team, both prime and all subconsultants. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit all of the required data will result in the Expression of Interest not being considered.

Firm's Name and Address	Firm's DBE/SWAM Status *	Firm's Age	Firm's Annual Gross Receipts

* YD — DBE Firm Certified by DMBE

N = DBE/SWAM Firm Not Certified by DMBE
NA = Firm Not Claiming DBE/SWAM Status

YS = SWAM Firm Certified by DMBE. Indicate whether small, woman-owned, or small business.

DMBE is the Virginia Department of Minority Business Enterprise

ATTACHMENT "A"
REQUIRED CERTIFICATIONS

A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING
(To be submitted with each bid or offer exceeding \$100,000)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

A. CERTIFICATION REGARDING LOBBYING PURSUANT TO 49 CFR PART 20

APPENDIX

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS**

(To be submitted with each bid or offer exceeding \$25,000)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Arlington County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Arlington County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them or commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statute or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

☐ I am unable to certify to the above statements. My explanation is attached.

ATTACHMENT C - ADDITIONAL VDOT REQUIRED CLAUSES, TERMS & CONDITIONS

1. COMPLIANCE WITH LAWS AND REGULATIONS: The Consultant shall keep fully informed of all federal, state, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on this Agreement, or which in any way affect the conduct of the services provided by the Consultant. It shall at all times observe and comply with, and shall cause its agents, subcontractors and employees to observe and comply with, all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the City of Fairfax and its employees and appointees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself or its agents, subcontractors or employees. If any discrepancy or inconsistency is discovered between this Agreement and any such law, ordinance, regulation, order, or decree, the Consultant shall immediately report the same to the Department in writing.

2. VIRGINIA PROHIBITED EMPLOYMENT DISCRIMINATION: The Consultant, its agents, employees, assigns or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Section 2.2-4311 of the Code of Virginia (1950), as amended. During the performance of this Agreement, the Consultant agrees as follows:

- a. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that the Consultant is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The Consultant will include the provisions of the foregoing paragraphs —all, —bII and —cII in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor.

3. NON-DISCRIMINATION PROVISION: The Consultant agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, sex or national origin; and further agrees to abide by Executive Order No. 11246 entitled —Equal Employment Opportunity,II as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibit discrimination on the basis of age. Section 49 CFR 21 is incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The Consultant shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia (1950), as amended, the terms of which are incorporated herein by reference. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the City of Fairfax shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. withholding of payments to the Consultant under this Agreement until the Consultant complies; and/or
- b. cancellation, termination or suspension of this Agreement, in whole or in part.

Federally Funded Projects:

Construction contractors and consultants agree to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e). Title VI of the Civil Rights Act of 1964 declares it to be the policy of the United States that discrimination on the grounds of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance and authorizes and directs the appropriate Federal departments, agencies, and subrecipients to take action to carry out this policy. Title VII of the Civil Rights Act prohibits discrimination against any employee or applicant for employment on the basis of race, religion, color, sex or national origin for employers with 15 or more employees. The contractor/consultant further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibits discrimination on the basis of age and FHWA 1273 required contract provisions for federal-aid construction projects. 49 CFR Parts 21, 23, 26, and 27, and 23 CFR Parts 200, 230, and 633 are incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The contractor/consultant shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5 40 through 51.5 46 of the Code of Virginia, as amended, the terms of which are incorporated herein by reference.

4. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (herein referred to as —the Consultantll), agrees as follows:

- a. Compliance with Regulations: The Consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (Title 49), Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- b. Nondiscrimination: The Consultant, with regard to the services provided by it after award and prior to completion of this Agreement, will not discriminate on the grounds of race, religion, color, sex, national origin, age or handicap in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the services cover a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subconsultants: In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement.
- d. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information. Consultants and subconsultants with 15 or more employees will submit an updated Title VI Evaluation Report (EEO-D2) annually as long as the consultant or subconsultant is performing in accordance with this Agreement.
- e. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

1) withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or

2) cancellation, termination or suspension of this Agreement, in whole or in part.

f. Incorporation of Provisions: The Consultant will include the provisions of paragraphs —all through —fill in every subcontract of \$10,000 or more, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontractor or procurement as the City of Fairfax or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the City of Fairfax to enter into such litigation to protect the interests of the City of Fairfax and, in addition, the Consultant may request VDOT and the United States to enter into such litigation to protect the interests of the Commonwealth and United States.

5. CERTIFICATION REGARDING NON-SEGREGATED FACILITIES: By the execution of this Agreement, the Consultant certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. The Consultant further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability. As used in this certification, the term —segregated facilities means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise. It agrees that, except where it has obtained identical certification from proposed subcontractors and material suppliers for specific time periods, it will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding ten thousand dollars, and that it will retain such certifications in its files.

6. DISADVANTAGED BUSINESS ENTERPRISES/SMALL, WOMAN AND MINORITY BUSINESS:

The Consultant, its agents, employees, assigns, or successors, and any person, firm or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of 49 CFR Part 26, as amended, which is hereby made part of this Agreement by reference. The Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBE firms have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. Subpart E of 49 CFR 26, Section 26.13 requires each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Further, the Consultant agrees to provide the City of Fairfax with the dollar amount contracted and name of each subcontractor which identifies itself as a DBE. [Include the following wording on contract with DBE Goals: The DBE goal for this Contract is ____%.] {necessary when goals are set}

In accordance with the Governor's Executive Order No. 33, the VDOT also requires the utilization of Small, Women and Minority (SWaM) Businesses to participate in the performance of consultant contracts. The Consultant shall take all necessary and reasonable steps in accordance with Executive Order No. 33, to ensure that SWaM firms have the maximum opportunity to compete for and perform contracts and subcontracts under this Agreement. Further, the Consultant agrees to provide the City of Fairfax with the dollar amount contracted and name of each subcontractor which identifies itself as a SWaM. [Include the following wording on contract with SWaM Goals: The Swam goal for this Contract is ____%.]

VDOT is also required to capture DBE and SWaM payment information on all professional services contracts. Therefore, the prime consultant will be required to complete the DBE and SWaM Payment Compliance Report, C-63 form on a quarterly basis.

In the event of the Consultant's noncompliance with the DBE/SWaM participation for the services indicated in Expression of Interest in response to the RFP, Attachment D, Scope of Work and Fee Proposal of this Agreement, the City of Fairfax shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the Consultant under this Agreement until the Consultant complies, and/or
- b. Cancellation, termination or suspension of this Agreement, in whole or in part.

7. TDD/TTY EQUIPMENT FOR THE DEAF: When seeking public participation through the maintenance of a toll free hot line number and/or publishing project-related materials, the Consultant agrees to ensure that all citizens have equally effective communication. The Consultant agrees to provide or identify a telecommunications device for the deaf/teletypewriter (TDD/TTY) or acceptable means of telephone access for individuals with impaired speech or hearing. The Consultant will provide notice of a TDD/TTY number whenever a standard telephone number is provided.

8. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Agreement, the Consultant certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

9. OCCUPATIONAL SAFETY AND HEALTH STANDARDS: The Consultant shall not require any individual employed in the performance of this Agreement to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under the Occupational Safety and Health Standards promulgated by the United States Secretary of Labor. This provision shall be made a condition of any subcontract entered into pursuant to this Agreement. In addition, the Consultant shall abide by the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the Code of Virginia (1950), as amended, and will fulfill the duties imposed under Section 40.1-51.1 of the Code of Virginia. Any violation of the aforementioned requirements or duties which is brought to the attention of the Consultant by any person shall be immediately abated.

10. CERTIFICATION REGARDING DEBARMENT: By the execution of this Agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; and have not been convicted of any violations of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
-

23. CORRECTION OF ERRORS: The Consultant shall check for accuracy any reports, and the design, drafting and details of final plans prior to submission. The Consultant will be required, without additional compensation, to correct any errors, including but not limited to omissions, discrepancies and ambiguities, in any services performed in fulfillment of the obligations of this Agreement, and shall also reimburse the City of Fairfax for any costs incurred. Acceptance of the plans or reports by the City of Fairfax shall not relieve the Consultant of the responsibility of subsequent correction of errors herein.

27. PAYMENT TO SUBCONTRACTORS: In accordance with Article 4 of the Virginia Public Procurement Act (Sections 2.2-4342 through 2.2-4356 of the Code of Virginia (1950), as amended), the Consultant shall make payment to all subcontractors within seven (7) days after receipt of payment from the City of Fairfax, or shall notify the City of Fairfax and subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Consultant shall pay interest at the rate of one percent per month to the subcontractor, unless otherwise provided in this Agreement, on all amounts that remain unpaid after seven (7) days except for the amounts withheld according to this Agreement.

The City of Fairfax does not require retainage to be withheld by the Consultant on any subcontracts. If the Consultant elects to withhold retainage on subcontracts, prompt payment of the retainage shall be made to the subcontractors within the later of 60 days after the final billing is received by the Consultant from the subcontractor or the satisfactory acceptance of the services by the Department. The City of Fairfax will notify the Consultant and the subcontractor in writing when the services have been satisfactorily accepted. If the retainage is not promptly paid, the Consultant shall notify the Department and the subcontractor in writing as to the reasons for not making payment.

These same requirements shall be included in each subcontractor agreement and shall be applicable to each lower-tier subcontractor.

29. COMPLIANCE WITH LOBBYING RESTRICTIONS (This section only applies to agreements using federal funds.): By signing this Agreement, the Consultant certifies that:

- a. Since promulgation of the federal requirements implementing Section 319 of PL 101-121, no federal appropriated funds have been paid and none will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, —Disclosure Form to Report Lobbying, in accordance with its instructions; and
 - c. The Consultant shall require that the language of this certification be included in all subcontracts at all tiers, and that all subcontractors shall certify and disclose accordingly.
-

30. RECORDS: The Consultant and subcontractors shall retain all books, documents, papers, accounting records and other evidence supporting the costs incurred, for three (3) years after payment of the final estimate or final audit, whichever is later. Such evidence shall be made available at the Consultant's offices at all reasonable times

and will be subject to audit and inspection by the City of Fairfax, VDOT or any authorized representatives of the Federal Government.

Evidence of costs incurred by a subcontractor shall be made available at its office at all reasonable times during the contract period between the Consultant and the subcontractor and for three years after written acceptance by the Consultant, for audit and inspection by the City of Fairfax, VDOT or any authorized representatives of the Federal Government. It shall be the Consultant's responsibility to notify the City of Fairfax, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the three-year retention period. Failure to do so may result in the Consultant's liability for any costs not supported by the proper documentation for the subcontractor's phase of the services. Final payment for the subcontractor's phase of the services will be made after total costs are determined by the final audit of the subcontractor.

41. DRUG-FREE WORKPLACE: During the performance of this contract, the Consultant agrees to:

- a. Provide a drug-free workplace for the consultant's employees
 - b. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition
 - c. State in all solicitations or advertisements for employees placed by or on behalf of the consultant that the consultant maintains a drug-free workplace
 - d. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- For the purpose of this section, —drug-free workplace means a site for the performance of work done in connection with a specific contract awarded to a consultant, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
-

CONFLICT OF INTEREST: For all engineering design services contracts for projects that are not considered design-build candidates: At this time, < Local Government > is not considering this project to be delivered through a design-build option. If the < Local Government > decides to deliver the project through design-build option, the successful consultant and any of its team members may not be allowed to participate in ANY subsequent design-build contracts. Furthermore, the < Local Government > will notify the successful 08OCT08-SGP-VII-15-12.4 consultant regarding the change in its intent of delivery method in advance. The Conflict of Interest determination will be made on a case by case basis at such time.]

PAYMENT - LUMP SUM PAYMENT

A. FEE: For services provided in accordance with the provisions of this Agreement, the City of Fairfax shall pay to the Consultant the Lump Sum Fee stated in the Letter of Agreement.
The fee shall include compensation for all services and costs specified in this Agreement, or as may be required for the completion of the services contained herein.

B. MONTHLY PARTIAL PAYMENTS: Monthly partial billings for services provided will be submitted, except when the net receivable amount is less than \$500.00. In such case, no partial payment will be made and the value of such work shall be carried over to the next monthly billing. Monthly partial payments will be made for the services outlined herein based on a percentage of the Lump Sum Fee equal to the percentage completion reported. Billings shall be submitted no more frequently than once every 30 calendar days.

C. TERMINATION WITHOUT CAUSE: In the event this Agreement is terminated without cause, payment of the Fee shall be made on the basis of the percentage of completion at the time of the effective date of termination, as determined by the Department.

Required Fixed Fee Clause - Additional Required Contract Clause

The contracting officer shall insert the following clause in fixed-price architect-engineer contracts **except** when—

(1) The head of the contracting activity or a designee determines in writing that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary;

(2) The design is for a standard structure and is not intended for a specific location; or

(3) There is little or no design effort involved.

(a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) of this clause. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract.

However, the Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Contractor's revised estimate of construction cost. The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the Government may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

(c) The estimated construction contract price for the project described in this contract is \$_____.

VIRGINIA SCC: All business entities, except for sole proprietorships, are required to register with the Virginia State Corporation Commission (A Business Registration Guide is available on the Internet at <http://www.state.va.us/scc/division/clk/brg.htm>). Foreign Professional corporations and Foreign Professional Limited Liability Companies must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorships that do not employ other individuals for which licensing is required must be registered in the Commonwealth of Virginia with the Department of Professional and Occupational Regulation, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (<http://www.state.va.us/dpor>). Board regulations require that all professional corporations and business entities that have branch offices located in Virginia which offer or render any professional services relating to the professions regulated by the Board be registered with the Board. Registration involves completing the required application and submitting the required registration fee for each and every branch office location in the commonwealth. All branch offices which offer or render any professional service must have at least one full-time resident professional in responsible charge who is licensed in the profession offered or rendered at each branch. All firms involved that are to provide professional services must meet this criterion prior to submitting an EOI to the < Local Government >. Individual engineers shall meet the requirements of Chapter 4, Title 54.1 of the Code of Virginia.

FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986: The < Local Government > will not consider for award any cost proposals submitted by any consultants and will not consent to subcontracting any portions of the contract to any 08OCT08-SGP-VII-15-12.11 subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

FAR AND ACCOUNTING: All firms submitting EOI (prime consultants, joint ventures and subconsultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48CFR31, —Federal Acquisition Regulations, Contract Cost Principles and Procedures, and 23CFR172, —Administration of Negotiated Contracts. All firms selected for a project (prime consultants, joint ventures and subconsultants) must submit their FAR audit data to the < Local Government > within ten work days of being notified of their selection. Should any firm on the consultant team fail to submit the required audit data within the ten work days, negotiations will be terminated by the < Local Government > and the next most qualified team invited to submit a proposal.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: The City of Fairfax assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The consultant and all subconsultants selected for this project will be required to submit a Title VI Evaluation Report (EEO-D2) within ten work days of notification of selection when requested by VDOT. This requirement applies to all consulting firms when the contract amount equals or exceeds \$10,000.

NON-DISCRIMINATION: The < Local Government > does not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**VIRGINIA DEPARTMENT OF TRANSPORTATION SPECIAL PROVISION FOR
SECTION 107.15**

December 10, 2010

Section 107.15 of the Specifications is replaced by the following:

Section 107.15—Use of Disadvantaged Business Enterprises (DBEs)

A. Disadvantaged Business Enterprise (DBE) Program Requirements

Any Contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations; and the Virginia Department of Transportation's (VDOT or the Department) Road and Bridge Specifications and DBE Program rules and regulations.

For the purposes of this provision, Contractor is defined as the Prime Contractor of the contract; and sub-contractor is defined as any DBE supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the contract. The Contractor shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements, the Contractor, for itself and for its subcontractors and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal and state DBE Program regulations. By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations and to bind the Contractor's subcontractors contractually to the same at the Contractor's expense.

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated herein and current at the time of the proceedings. Where applicable, the Department will notify the Contractor of any changes to the appeal requirements, processes, and procedures after receiving notification of the Contractor's desire to appeal.

All time frames referenced in this provision are expressed in business days unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.

B. DBE Certification

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Minority Business Enterprise (DMBE) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the

specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of Minority Business Enterprise and the Metropolitan Washington Airports Authority Internet websites: <http://www.dmbv.virginia.gov/>; <http://mwaa.com/362.htm>

C. Bank Services

The Contractor and each subcontractor are encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services and the fees charged for services typically will not be eligible for DBE Program contract goal credit. Such information is available from the VDOT's Internet Civil Rights Division website:

<http://insidevdot/C7/Civil%20Rights/default.aspx>

D. DBE Program-Related Certifications Made by Bidders\Contractors

By submitting a bid and by entering into any contract on the basis of that bid, the bidder/Contractor certifies to each of the following DBE Program-related conditions and assurances:

1. That the management and bidding officers of its firm agree to comply with the bidding and project construction and administration obligations of the USDOT DBE Program requirements and regulations of 49 CFR Part 26 as amended, and VDOT's Road and Bridge Specifications and DBE Program requirements and regulations.
2. Under penalty of perjury and other applicable penal law that it has complied with the DBE Program requirements in submitting the bid, and shall comply fully with these requirements in the bidding, award, and execution of the contract.
3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The bidder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The bidder further certifies that the bidder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a bidder and a DBE whereby the DBE promises not to provide quotations for performance of work to other bidders is prohibited.
4. As a bidder, good faith efforts were made to obtain DBE participation in the proposed contract at or above the goal for DBE participation established by VDOT. It has submitted as a part of its bid true, accurate, complete, and detailed documentation of the good faith efforts it performed to meet the contract goal for DBE participation. The bidder, by signing and submitting its bid, certifies the DBE participation information submitted within the stated time thereafter is true, correct, and complete, and that the information provided includes the names of all DBE firms that will participate in the contract, the specific line item(s) that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE. The specific line item must reference the VDOT line number and item number contained in the proposal.
5. The bidder further certifies, by signing its bid, it has committed to use each DBE firm listed for the specific work item shown to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the bid, the bidder certifies on work that it proposes to sublet; it has made good faith efforts to seek out and consider DBEs as potential subcontractors. The bidder shall contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts. Award of the contract will be conditioned upon meeting these and other listed

requirements of 49 CFR Part 26.53 and the contract documents.

6. Once awarded the contract, the Contractor shall make good faith efforts to utilize DBE firms to perform work designated to be performed by DBEs at or above the amount or percentage of the dollar value specified in the bidding documents. Further, the Contractor understands it shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Contractor's own forces or those of an affiliate of the Contractor without the prior written consent of VDOT as set out within the requirements of this provision.

7. Once awarded the contract, the Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBEs. The designation and identity of this officer need be submitted only once by the Contractor during any twelve (12) month period at the preconstruction conference for the first contract the Contractor has been awarded during that reporting period. The Department will post such information for informational and administrative purposes at VDOT's Internet Civil Rights Division website.

8. Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. Where a contract exists and where the Contractor, DBE firm, or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract regulations and/or requirements have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

9. In the event a bond surety assumes the completion of work, if for any reason VDOT has terminated the prime Contractor, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original prime Contractor in accordance with the requirements of this specification.

E. Disqualification of Bidder

Bidders may be disqualified from bidding for failure to comply with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge Specifications.

F. Bidding Procedures

The following bidding procedures shall apply to the contract for DBE Program compliance purposes:

1. Contract Goal, Good Faith Efforts Specified: All bidders evidencing the attainment of DBE goal commitment equal to or greater than the required DBE goal established for the project must submit completed Form C-111, Minimum DBE Requirements, and Form C-48, Subcontractor/Supplier Solicitation and Utilization, as a part of the bid documents. Form C-111 may be submitted electronically or may be faxed to the Department, but in no case shall the bidder's Form C-111 be received later than 10:00 a.m. the next business day after the time stated in the bid proposal for the receipt of bids. Form C-48 must be received within ten (10) business days after the bid opening.

If, at the time of submitting its bid, the bidder knowingly cannot meet or exceed the required DBE contract goal, it shall submit Form C-111 exhibiting the DBE participation it commits to attain as a part of its bid documents. The bidder shall then submit Form C-

49, DBE Good Faith Efforts Documentation, within two (2) business days after the bid opening.

The lowest responsive and responsible bidder must submit its properly executed Form C-112, Certification of Binding Agreement, within three (3) business days after the bids are received. DBEs bidding as prime contractors are not required to submit Form C-112 unless they are utilizing other DBEs as subcontractors.

If, after review of the apparent lowest bid, VDOT determines the DBE requirements have not been met, the apparent lowest successful bidder must submit Form C-49, DBE Good Faith Efforts Documentation, which must be received by the Contract Engineer within two (2) business days after official notification of such failure to meet the aforementioned DBE requirements.

Forms C-48, C-49, C-111, and C-112 can be obtained from the VDOT website at:
<http://vdotforms.vdot.virginia.gov/>

Instructions for submitting Form C-111 can be obtained from the VDOT website at:
http://www.virginiadot.org/business/resources/const/Exp_DBE_Commitments.pdf

2. Bid Rejection: The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid.

If the lowest bidder is rejected for failure to submit the required documentation in the specified time frames, the Department may award the work to the next lowest bidder, or re-advertise the proposed work at a later date or proceed otherwise as determined by the Commonwealth.

3. Good Faith Efforts Described: In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE participation sufficient to meet the DBE Program and contract goal requirements.

Good faith efforts may be determined through use of the following list of the types of actions the bidder may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

(a) Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to DBEs who have the capability to perform the work of the contract. Examples include: advertising in at least one daily/weekly/monthly newspaper of general circulation, as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. The bidder shall solicit this interest no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation. The bidder shall determine with certainty if the DBEs are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts as requested on Form C-49, DBE Good Faith Efforts Documentation.

(b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to completely perform

all portions of this work in its entirety or use its own forces;

(c) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation;

(d) Negotiating for participation in good faith with interested DBEs;

1. Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs that were considered; dates DBEs were contacted; a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work;

2. A bidder using good business judgment should consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and should take a firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not sufficient reason for a bidder's failure to meet the contract goal for DBE participation, as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make diligent good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference can be shown by the bidder to be excessive, unreasonable, or greater than would normally be expected by industry standards;

(e) A bidder cannot reject a DBE as being unqualified without sound reasons based on a thorough investigation of the DBE's capabilities. The DBE's standing within its industry, membership in specific groups, organizations, associations, and political or social affiliations, and union vs. non-union employee status are not legitimate causes

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for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal for DBE participation;

(f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by VDOT or by the bidder/Contractor;

(g) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in these provisions;

(h) Effectively using the services of appropriate personnel from VDOT and from DMBE; available minority/women community or minority organizations; contractors' groups; local, state, and Federal minority/ women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

G. Documentation and Administrative Reconsideration of Good Faith Efforts

During Bidding: As described in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision, the bidder must provide Form C-49, DBE Good Faith Efforts Documentation, of its efforts made to meet the DBE contract goal as proposed by VDOT within the time frame specified in this provision. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. The bidder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firms participation in the proposed contract work. However, regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed forms C-111, C-112, C-48, and C-49, as aforementioned, or face potential bid rejection.

If a bidder does not submit its completed and executed forms C-111, or C-112, when required

by this Special Provision, the bidder's bid will be considered non-responsive and may be rejected.

Where the Department upon initial review of the bid results determines the apparent low bidder has failed or appears to have failed to meet the requirements of the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision and has failed to adequately document that it made a good faith effort to achieve sufficient DBE participation as specified in the bid proposal, that firm upon notification of the Department's initial determination will be offered the opportunity for administrative reconsideration before VDOT rejects that bid as non-responsive. The bidder shall address such request for reconsideration in writing to the Contract Engineer within five (5) business days of receipt of notification by the Department and shall be given the opportunity to discuss the issue and present its evidence in person to the Administrative Reconsideration Panel. The Administrative Reconsideration Panel will be made up of VDOT Division Administrators or their designees, none of who took part in the initial determination that the bidder failed to make the goal or make adequate good faith efforts to do so. After reconsideration, VDOT shall notify the bidder in writing of its decision and explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

If, after reconsideration, the Department determines the bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected.

If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid. The Contractor is still encouraged to seek additional DBE participation during the life of the contract.

However, such action will not relieve the Contractor of its responsibility for complying with the reduced DBE requirement during the life of the contract or any administrative sanctions as may be appropriate.

During the Contract: If a DBE, through no fault of the Contractor, is unable or unwilling to fulfill his agreement with the Contractor, the Contractor shall immediately notify the Department and provide all relevant facts. If a Contractor relieves a DBE subcontractor of the responsibility to perform work under their subcontract, the Contractor is encouraged to take the appropriate steps to obtain a DBE to perform an equal dollar value of the remaining subcontracted work. In such instances, the Contractor is expected to seek DBE participation towards meeting the goal during the performance of the contract.

If the Contractor fails to conform to the schedule of DBE participation as shown on the progress schedule, or at any point at which it is clearly evident that the remaining dollar value of allowable credit for performing work is insufficient to obtain the scheduled participation, and the Contractor has not taken the preceding actions, the Contractor and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as conformance with the schedule of DBE participation is achieved.

Project Completion: If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit

documentation to the State Construction Engineer to substantiate that failure was due solely to quantitative underrun(s), elimination of items subcontracted to DBEs, or to circumstances beyond their control, and that all feasible means have been used to obtain the required participation. The State Construction Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to enjoin the Contractor from bidding on other VDOT work as described herein, the enjoinder period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

H. DBE Participation for Contract Goal Credit

DBE participation on the contract will count toward meeting the DBE contract goal in accordance with the following criteria:

1. Cost-plus subcontracts will not be considered to be in accordance with normal industry practice and will not normally be allowed for credit.
2. The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE will be counted toward meeting the contract goal for DBE participation in accordance with the **DBE Program-Related Certifications Made by Bidders\Contractors** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself or subcontracted by the DBE to other DBE firms.
3. When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Contractor may count toward the DBE goal only that portion of the total dollar value of the contract equal to the distinctly defined portion of the contract work that the DBE has performed with the DBE's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Contractor seeks to claim the DBE's credit toward the DBE contract goal.
4. When a DBE subcontracts part of the work of the contract to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE's subcontractor at a lower tier is a certified DBE. Work that a DBE subcontracts to either a non-DBE firm or to a non-certified DBE firm will not count toward the DBE contract goal. The cost of supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or the prime's affiliated firms will not count toward the contract goal for DBE participation.
5. The Contractor may count expenditures to a DBE subcontractor toward the DBE contract goal only if the DBE performs a Commercially Useful Function (CUF) on that contract.
6. A Contractor may not count the participation of a DBE subcontractor toward the Contractor's final compliance with the DBE contract goal obligations until the amount being counted has actually been paid to the DBE. A Contractor may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a certified DBE manufacturer.

(a) For the purposes of this Special Provision, a regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the DBE firm shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products or equipment in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

(b) A DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the DBE both owns and operates distribution equipment for the products it sells and provides for the contract work. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis to be eligible for credit to meet the DBE contract goal.

(c) If a DBE regular dealer is used for DBE contract goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the DBE regular dealer, who shall be responsible for their distribution.

(d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.

(g) A Contractor may count toward the DBE contract goal the following expenditures to DBE firms that are not regular dealers or manufacturers for DBE program purposes:

1. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.
2. The entire amount of that portion of the construction contract that is performed by the DBE's own forces and equipment under the DBE's supervision. This includes the cost of supplies and materials ordered and paid for by the DBE for contract work, including supplies purchased or equipment leased by the DBE, except supplies and equipment a DBE subcontractor purchases or leases from the prime Contractor or its affiliates.

(h) A Contractor may count toward the DBE contract goal one hundred (100) percent of the fees paid to a DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by VDOT to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. A Contractor shall not count costs for the removal or relocation of excess material from or on the job site when the DBE trucking company is not the manufacturer of or a regular dealer in those materials and supplies. The DBE trucking firm shall also perform a Commercially Useful Function (CUF) on the project and not operate merely as a pass through for the purposes of gaining credit toward the DBE contract goal. Prior to submitting a bid, the Contractor shall determine, or contact the VDOT Civil Rights Division or its district Offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project. See section on **Miscellaneous DBE Program Requirements**;

Factors used to Determine if a DBE Trucking Firm is Performing a CUF.

(i) The Contractor will receive DBE contract goal credit for the fees or commissions charged by and paid to a DBE broker who arranges or expedites sales, leases, or other project work or service arrangements provided that those fees are determined by VDOT to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that regularly engages in arranging for delivery of material, supplies, and equipment, or regularly arranges for the providing of project services as a course of routine business but does not own or operate the delivery equipment necessary to transport materials, supplies, or equipment to or from a job site.

I. Performing a Commercially Useful Function (CUF)

No credit toward the DBE contract goal will be allowed for contract payments or expenditures to a DBE firm if that DBE firm does not perform a CUF on that contract. A DBE performs a CUF when the DBE is solely responsible for execution of a distinct element of the contract work and the DBE actually performs, manages, and supervises the work involved with the firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF the DBE alone shall be responsible and bear the risk for the material and supplies used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the DBE's own forces and equipment, and paying for those materials and supplies. The amount the DBE firm is to be paid under the contract shall be commensurate with the work the DBE actually performs and the DBE credit claimed for the DBE's performance.

Monitoring CUF Performance: It shall be the Contractor's responsibility to ensure that all DBE firms selected for subcontract work on the contract, for which he seeks to claim credit toward the contract goal, perform a CUF. Further, the Contractor is responsible for and shall ensure that each DBE firm fully performs the DBE's designated tasks with the DBE's own forces and equipment under the DBE's own direct supervision and management or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this provision the DBE's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased by the DBE, and over which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the prime Contractor or an affiliate of the Contractor under this contract.

VDOT will monitor the Contractor's DBE involvement during the performance of the contract. However, VDOT is under no obligation to warn the Contractor that a DBE's participation will not count toward the goal.

DBEs Must Perform a Useful and Necessary Role in Contract Completion: A DBE does not perform a commercially useful function if the DBE's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

DBEs Must Perform The Contract Work With Their Own Workforces: If a DBE does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE's contract with the DBE's own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involve, VDOT will presume that the DBE is not performing a CUF and such participation will not be counted toward the contract goal.

VDOT Makes Final Determination On Whether a CUF Is Performed: VDOT has the final authority to determine whether a DBE firm has performed a CUF on a federal-aid contract.

To determine whether a DBE is performing or has performed a CUF, VDOT will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Contractor or by employees or equipment of the Contractor shall be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated.

J. Verification of DBE Participation and Imposed Damages

Within fourteen days after contract execution, the Contractor shall submit to the Responsible Engineer, with a copy to the District Civil Rights Office (DCRO), a fully executed subcontract agreement for each DBE used to claim credit in accordance with the requirements stated on Form C-112. The subcontract agreement shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subcontractor. Because of the commercial damage that the Contractor and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff will treat subcontract agreements as proprietary Contractor trade secrets with regard to Freedom of Information Act requests. In lieu of subcontract agreements, purchase orders may be submitted for haulers, suppliers, and manufacturers. These too, will be treated confidentially and protected. Such purchase orders must contain, as a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

The Contractor shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each quarter during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report. The department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations. Failure to provide Form C-63 to the District Civil Rights Office (DCRO) within five (5) business days after the reporting period may result in delay of approval of the Contractor's monthly progress estimate for payment. The names and certification numbers of DBE firms provided by the Contractor on the various forms indicated in this Special Provision shall be exactly as shown on the DMBE's or MWAA's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the Contractor as shown on the Prequalification Application, Form C-32 or the Prequalification/Certification Renewal Application, Form C-32A, or authorized by letter from the Contractor. If DBE firms are used which have not been previously documented with the Contractor's bid and for which the Contractor now desires to claim credit toward the project goal, the Contractor shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE beginning work.

Form C-63 can be obtained from the VDOT website at: <http://vdotforms.vdot.virginia.gov/>

The Contractor shall submit to the Responsible Engineer its progress schedule with a copy to the DCRO, as required by Section 108.03 of the Specifications or other such specific contract scheduling specification that may include contractual milestones, i.e., monthly or VDOT requested updates. The Contractor shall include a narrative of applicable DBE activities relative to work activities of the Contractor's progress schedule, including the approximate start times and durations of all DBE participation to be claimed for credit that shall result in full achievement of the DBE goal required in the contract.

On contracts awarded on the basis of good faith efforts, narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component or quarter of the work, as applicable, in which DBE

work is to be performed, the Contractor shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any current DBEs not previously submitted who will perform the work during that major component or quarter for which the Contractor seeks to claim credit toward the contract DBE goal. The Contractor shall obtain the prior approval of the Department for any assistance it may provide to the DBE beyond its existing resources in executing its commitment to the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If the Contractor is aware of any assistance beyond a DBE's existing resources that the Contractor, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, the Contractor shall submit a new or revised narrative statement for VDOT's approval prior to assistance being rendered.

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified time frames, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

K. Documentation Required for Semi-final Payment

On those projects nearing completion, the Contractor must submit Form C-63 marked "Semi-Final" within twenty (20) days after the submission of the last regular monthly progress estimate to the DCRO. The form must include each DBE used on the contract work and the work performed by each DBE. The form shall include the actual dollar amount paid to each DBE for the accepted creditable work on the contract. The form shall be certified under penalty of perjury, or other applicable law, to be accurate and complete. VDOT will use this certification and other information available to determine applicable DBE credit allowed to date by VDOT and the extent to which the DBEs were fully paid for that work. The Contractor shall acknowledge by the act of filing the form that the information is supplied to obtain payment regarding a federal participation contract. A letter of certification, signed by both the prime Contractor and appropriate DBEs, will accompany the form, indicating the amount, including any retainage, if present, that remains to be paid to the DBE(s).

L. Documentation Required for Final Payment

On those projects that are complete, the Contractor shall submit a final Form C-63 marked "Final" to the DCRO, within thirty (30) days of the final estimate. The form must include each DBE used on the contract and the work performed by each DBE. The form shall include the actual dollar amount paid to each DBE for the creditable work on the contract. VDOT will use this form and other information available to determine if the Contractor and DBEs have satisfied the DBE contract goal percentage specified in the contract and the extent to which credit was allowed. The Contractor shall acknowledge by the act of signing and filing the form that the information is supplied to obtain payment regarding a federal participation contract.

M. Prompt Payment Requirements

The Contractor shall make prompt and full payment to the subcontractor(s) of any retainage held by the prime Contractor after the subcontractor's work is satisfactorily completed. For purposes of this Special Provision, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by VDOT. When VDOT has made partial acceptance of a portion of the prime contract, the Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

Upon VDOT's payment of the subcontractor's portion of the work as shown on the monthly progress estimate and the receipt of payment by the Contractor for such work, the Contractor shall make compensation in full to the subcontractor for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subcontractor's portion of the work shall mean the Contractor has issued payment in full, less agreed upon retainage, if any, to the subcontractor for that portion of the subcontractor's work that VDOT paid to the Contractor on the monthly progress estimate.

The Contractor shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from VDOT in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications.

If the Contractor fails to make payment for the subcontractor's portion of the work within the time frame specified herein, the subcontractor shall contact the Responsible Engineer and the Contractor's bonding company in writing. The bonding company and VDOT will investigate the cause for non-payment and, barring mitigating circumstances that would make the subcontractor ineligible for payment, ensure payment in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Specifications. By bidding on this contract, and by accepting and executing this contract, the Contractor agrees to assume these contractual obligations, and to bind the Contractor's subcontractors contractually to those prompt payment requirements.

Nothing contained herein shall preclude the Contractor from withholding payment to the subcontractor in accordance with the terms of the subcontract in order to protect the Contractor from loss or cost of damage due to a breach of agreement by the subcontractor.

N. Miscellaneous DBE Program Requirements

Loss of DBE Eligibility:

When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

1. When a Bidder/Contractor has made a commitment to use a DBE firm that is not currently certified, thereby making the Contractor ineligible to receive DBE participation credit for work performed, and a subcontract has not been executed, the ineligible DBE firm does not count toward either the contract goal or overall goal. The Contractor shall meet the contract goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the Contract Engineer that it has made good faith efforts to do so.
2. When a Bidder/Contractor has executed a subcontract with a certified DBE firm prior to official notification of the DBE firm's loss of eligibility, the Contractor may continue to use the firm on the contract and shall continue to receive DBE credit toward its DBE goal for the subcontractor's work.
3. When VDOT has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before VDOT has issued the notice of its ineligibility shall count toward the contract goal.

Termination of DBE: If a certified DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, the Contractor must promptly request approval to substitute or replace that firm in accordance with this section of this Special Provision.

The Contractor, as aforementioned in **DBE Program-Related Certifications Made by Bidders/Contractors**, shall notify VDOT in writing before terminating and/or replacing the

DBE that was committed as a condition of contract award or that is otherwise being used or represented to fulfill DBE contract obligations during the contract performance period. Written consent from the Department for terminating the performance of any DBE shall be granted only when the Contractor can demonstrate that the DBE is unable, unwilling, or ineligible to perform its obligations for which the Contractor sought credit toward the contract DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE shall not be based on the Contractor's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a certified DBE.

1. All Contractor requests to terminate, substitute, or replace a certified DBE shall be in writing, and shall include the following information:
 - (a) The date the Contractor determined the DBE to be unwilling, unable, or ineligible to perform.
 - (b) The projected date that the Contractor shall require a substitution or replacement DBE to commence work if consent is granted to the request.
 - (c) A brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to the Contractor's assertion that the DBE is unwilling, unable, or ineligible to perform;
 - (d) A brief statement of the affected DBE's capacity and ability to perform the work as determined by the Contractor;
 - (e) A brief statement of facts regarding actions taken by the Contractor which are believed to constitute good faith efforts toward enabling the DBE to perform;
 - (f) The current percentage of work completed on each bid item by the DBE;
 - (g) The total dollar amount currently paid per bid item for work performed by the DBE;
 - (h) The total dollar amount per bid item remaining to be paid to the DBE for work completed, but for which the DBE has not received payment, and with which the Contractor has no dispute;
 - (i) The total dollar amount per bid item remaining to be paid to the DBE for work completed, but for which the DBE has not received payment, and over which the Contractor and/or the DBE have a dispute.
2. Contractor's Written Notice to DBE of Pending Request to Terminate and Substitute with another DBE.

The Contractor shall send a copy of the "request to terminate and substitute" letter to the affected committed DBE firm, in conjunction with submitting the request to the DCRO. The affected DBE firm may submit a response letter to the Department within two (2) business days of receiving the notice to terminate from the Contractor. The affected DBE firm shall explain its position concerning performance on the committed work. The Department will consider both the Contractor's request and the DBE's response and explanation before approving the Contractor's termination and substitution request, or determining if any action should be taken against the Contractor. If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Contractor is unsuccessful in notifying the affected DBE firm, the Department will verify that the affected, committed DBE firm is unable or unwilling to continue the contract. The Department will immediately approve the Contractor's request for a substitution.

3. Proposed Substitution of Another Certified DBE

Upon termination of a DBE, the Contractor shall use reasonable good faith efforts to replace the terminated DBE. The termination of such DBE shall not relieve the Contractor of its obligations pursuant to this section, and the unpaid portion of the terminated DBE's contract will not be counted toward the contract goal. When a DBE substitution is necessary, the Contractor shall submit an amended Form C-111 with the name of another DBE firm, the proposed work to be performed by that firm,

and the dollar amount of the work to replace the unfulfilled portion of the work of the originally committed DBE firm. The Contractor shall furnish all pertinent information including the contract I.D. number, project number, bid item, item description, bid unit and bid quantity, unit price, and total price. In addition, the Contractor shall submit documentation for the requested substitute DBE as described in this section of this Special Provision.

Should the Contractor be unable to commit the remaining required dollar value to the substitute DBE, the Contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. The Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are viewed by VDOT as merely superficial or pro-forma will not be considered good faith efforts to meet the contract goal for DBE participation. The Contractor must document the steps taken that demonstrated its good faith efforts to obtain participation as set forth in the **Good Faith Efforts Described** section of this Special Provision.

Factors Used to determine if a DBE Trucking Firm is performing a CUF:

The following factors will be used to determine whether a DBE trucking company is performing a CUF:

1. To perform a CUF the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE is responsible by subcontract on a particular contract. There shall not be a contrived arrangement, including, but not limited to, any arrangement that would not customarily and legally exist under regular construction project subcontracting practices for the purpose of meeting the DBE contract goal;
2. The DBE must own and operate at least one fully licensed, insured, and operational truck used in the performance of the contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the necessary materials or supplies;
3. The DBE receives full contract goal credit for the total reasonable amount the DBE is paid for the transportation services provided on the contract using trucks the DBE owns, insures, and operates using drivers that the DBE employs and manages;
4. The DBE may lease trucks from another certified DBE firm, including from an owneroperator who is certified as a DBE. The DBE firm that leases trucks from another DBE will receive credit for the total fair market value actually paid for transportation services the lessee DBE firm provides on the contract;
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees, *not to exceed the value of transportation services provided by DBE-owned trucks on the contract*. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

EXAMPLE

DBE Firm X uses two (2) of its own trucks on a contract. The firm leases two (2) trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z.

Firm X

Value of Trans. Serv.

(For Illustrative
Purposes Only)

Truck 1 Owned by DBE \$100 per day

Truck 2 Owned by DBE \$100 per day

Firm Y

Truck 1 Leased from DBE \$110 per day

Truck 2 Leased from DBE \$110 per day

Firm Z

Truck 1 Leased from Non DBE \$125 per day
Truck 2 Leased from Non DBE \$125 per day
Truck 3 Leased from Non DBE \$125 per day
Truck 4 Leased from Non DBE \$125 per day
Truck 5 Leased from Non DBE* \$125 per day
Truck 6 Leased from Non DBE* \$125 per day
DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z (not to exceed the value of transportation services provided by DBE-owned trucks).

Credit = 8 Trucks

Total Value of Transportation Services = \$820

In all, full DBE credit would be allowed for the participation of eight (8) trucks (twice the number of DBE trucks owned and leased) and the dollar value attributable to the Value of Transportation Services provided by the 8 trucks.

** With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.*

6. For purposes of this section, the lease must indicate that the DBE firm leasing the truck has exclusive use of and control over the truck. This will not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, provided the lease gives the DBE absolute priority for and control over the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm that has leased the truck at all times during the life of the lease.

Data Collection: In accordance with 49CFR Section 26.11, all firms bidding on prime contracts and bidding or quoting subcontracts on federal-aid projects shall provide the following information to the Contract Engineer annually.

- o Firm name
- o Firm address
- o Firm's status as a DBE or non-DBE
- o The age of the firm and
- o The annual gross receipts of the firm

The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the bidder. However, the above information can be submitted by means of the Annual Gross Receipts Survey as required in the Prequalification/Certification application. All bidders, including DBE prime Contractor bidders, shall complete and submit to the Contract Engineer the Subcontractor/Supplier Solicitation and Utilization Form C-48 for each bid submitted; to be received within ten (10) business days after the bid opening. Failure of bidders to submit this form in the time frame specified may be cause for disqualification of the bidder and rejection of their bid in accordance with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge specifications.

O. Suspect Evidence of Criminal Behavior

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted, prosecution.

Suspected DBE Fraud

In appropriate cases, VDOT will bring to the attention of the U. S. Department of Transportation (USDOT) any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 49CFR Part 31.

P. Summary of Remedies for Non-Compliance with DBE Program Requirements

Failure of any bidder\Contractor to comply with the requirements of this Special Provision for Section 107.15 of the Virginia Road and Bridge Specifications, which is deemed to be a condition of bidding, or where a contract exists, is deemed to constitute a breach of contract shall be remedied in accordance with the following:

1. Disadvantaged Business Enterprise (DBE) Program Requirements

The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate. All administrative remedies noted in this provision are automatic unless the Contractor exercises the right of appeal within the required timeframe(s) specified herein.

2. DBE Program-Related Certifications Made by Bidders\Contractors

Once awarded the contract, the Contractor shall comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each certified DBE firm participating in the contract shall fully perform the designated work items with the DBE's own forces and equipment under the DBE's direct supervision, control, and management. Where a contract exists and where the Contractor, DBE firm, or any other firm retained by the Contractor has failed to comply with federal or VDOT DBE Program regulations and/or their requirements on that contract, VDOT has the authority and discretion to determine the extent to which the DBE contract requirements have not been met, and will assess against the Contractor any remedies available at law or provided in the contract in the event of such a contract breach.

3. Disqualification of Bidder

Bidders may be disqualified from bidding for failure to comply with the requirements of this Special Provision, the contract specifications, and VDOT Road and Bridge Specifications.

4. Bidding Procedures

The failure of a bidder to submit the required documentation within the timeframes specified in the **Contract Goal, Good Faith Efforts Specified** section of this Special Provision may be cause for rejection of that bidder's bid. If the lowest bidder is rejected for failure to submit required documentation in the specified time frames, the Department may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth.

In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, VDOT will determine if the bidder's efforts were adequate good faith efforts, and if given all relevant circumstances, those efforts were to the extent a bidder actively and aggressively seeking to meet the requirements would make. Regardless of the DBE contract goal participation level proposed by the bidder or the extent of good faith efforts shown, all bidders shall timely and separately file their completed and executed Forms C-111, C-112, C-48, and Form C-49, as aforementioned, or face potential bid rejection. If a bidder does not submit its completed and executed C-111, or C-112, when required by this Special Provision, the bidder's bid will be considered nonresponsive and may be rejected. If, after reconsideration, the Department determines the

bidder has failed to meet the requirements of the contract goal and has failed to make adequate good faith efforts to achieve the level of DBE participation as specified in the bid proposal, the bidder's bid will be rejected. If sufficient documented evidence is presented to demonstrate that the apparent low bidder made reasonable good faith efforts, the Department will award the contract and reduce the DBE requirement to the actual commitment identified by the lowest successful bidder at the time of its bid. The Contractor is encouraged to seek additional participation during the life of the contract. If the Contractor fails to conform to the schedule of DBE participation as shown on the progress schedule, or at any point at which it is clearly evident that the remaining dollar value of allowable credit for performing work is insufficient to obtain the scheduled participation, the Contractor and any aforementioned affiliates may be enjoined from bidding for 60 days or until such time as conformance with the schedule of DBE participation is achieved. In such instances, the Contractor is expected to seek DBE participation towards meeting the goal during the prosecution of the contract. If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days.

Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the State Construction Engineer to substantiate that failure was due solely to quantitative underrun(s) or elimination of items subcontracted to DBEs, and that all feasible means have been used to obtain the required participation. The State Construction Engineer upon verification of such documentation shall make a determination whether or not the Contractor has met the requirements of the contract. If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The decision of the Administrative Reconsideration Panel shall be administratively final. The enjoinder period will begin upon the Contractor's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

5. Verification of DBE Participation and Imposed Damages

If the Contractor fails to comply with correctly completing and submitting any of the required documentation requested by this provision within the specified time frames, the Department will withhold payment of the monthly progress estimate until such time as the required submissions are received by VDOT. Where such failures to provide required submittals or documentation are repeated the Department will move to enjoin the Contractor and any prime contractual affiliates, as in the case of a joint venture, from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects until such submissions are received.

In addition to the remedies described heretofore in this provision VDOT also exercises its rights with respect to the following remedies:

Suspect Evidence of Criminal Behavior

Failure of a bidder, Contractor, or subcontractor to comply with the Virginia Department of Transportation Road and Bridge Specifications and these Special Provisions wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted prosecution.

In appropriate cases, VDOT will bring to the attention of the U. S. Department of Transportation (USDOT) any appearance of false, fraudulent, or dishonest conduct in

connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 49CFR Part 31.

4.1 GOOD FAITH EFFORT

(Federally funded project with DBE Goal; **until further notice, DBE goals will not be assigned to consultant service contracts**)

The Department will accept what consultants submit in their EOI regarding good faith efforts. If a firm that has submitted good faith effort documentation makes the short list, the procuring Division Administrator (cannot be delegated unless he/she will be out of the office for more than five work days) along with a representative of the EO Division will determine if the good faith effort is acceptable.

When there is a contract goal, a consultant must make good faith efforts to meet it. The consultant can do so either through obtaining enough DBE participation to meet the goal or documenting the good faith efforts it made to do so. These means of meeting contract goal requirements are fully equivalent. 49 CFR Part 26 (the Rule) explicitly provides that the Department must not disregard showings of good faith efforts, and it gives consultants the right to have the Department reconsider a decision that their good faith efforts were insufficient. The Department is prohibited from denying a contract to a consultant simply because it did not obtain enough DBE participation to meet the goal. The Department must seriously consider consultants' documentation of good faith efforts. To make certain that consultants' showings are taken seriously, the Rule requires the Department to offer administrative reconsideration to consultants whose good faith efforts showings are initially rejected.

The Rule also ensures flexibility for consultants by requiring that any contract goal be waived entirely for a prime consultant that demonstrates that it made good faith efforts but was still unable to meet the goal. When the Department sets a contract goal, the basic obligation of consultants is to make good faith efforts to meet it. They can demonstrate these efforts in either of two ways, which are equally valid. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet the goal. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. A refusal by the Department to accept valid showings of good faith is not acceptable under the Rule. The Rule makes clear that the Department is not to use a —conclusive presumption! approach, in which the apparent successful consultant is summarily found to have failed to make good faith efforts simply because another consultant was able to meet the goal. However, the performance of other consultants in meeting the contract can be a relevant factor in a good faith effort determination, in more than one way. For example, when the apparent successful consultant fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful consultant could have met the goal. It does not, by itself, prove that the apparent successful consultant did not make a good faith effort to get DBE participation, however. On the other hand, if the apparent successful consultant fails to meet the goal, but meets or exceeds the average DBE participation obtained by other consultants, the Department may view this, in conjunction with other factors, as evidence of the apparent successful consultant having made good faith efforts. The fact that some additional costs may be involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet a DBE contract goal, as long as such costs are reasonable.

If the Department determines that the apparent successful consultant has failed to meet the requirements of a good faith effort, the Department must, before awarding the contract, provide the consultant an opportunity for administrative reconsideration. The Department intends that the process be informal and timely. The Department will ensure that the process is completed within a brief period (e.g., 5-10 days) to minimize any potential delay in procurements. The consultant will have an opportunity to meet with the reconsideration official, but a formal hearing is not required. As part of this reconsideration, the consultant must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department's decision on reconsideration will be made by an official who did not take part in the

original determination that the consultant failed to meet the goal or make adequate good faith efforts to do so. The consultant must have the opportunity to meet in person with the reconsideration official to discuss the issues of whether it met the goal or made adequate good faith efforts to do so. The Department will send the consultant a written decision on reconsideration, explaining the basis for finding that the consultant did or did not meet the goal or make adequate good faith efforts to do so. The Department's reconsideration personnel consists of the Commissioner's DBE Review Panel.

It is up to the Department to make a fair and reasonable judgment whether a consultant that did not meet the goal made adequate good faith efforts. It is important for the Department to consider the quality, quantity, and intensity of the different kinds of efforts that the consultant has made. The efforts employed by the consultant should be those that one could reasonably expect a consultant to take if the consultant were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The Department's determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

If DBE is prime, they will be allowed to count toward goals the work they commit to performing with their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE consultants on prime contracts will be expected to make the same outreach efforts as other consultants.

When a DBE participates in a contract, the Department will count only the value of the work actually performed by the DBE toward DBE goals. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function. If a DBE firm loses certification, its work no longer counts toward the DBE goal.

All consultants will be required to submit the following information to the Department with the EOI:
The names and addresses of DBE firms that will participate in the contract;

- A description of the work that each DBE will perform;
- The percentage amount of the participation of each DBE firm participating;
- Written documentation of the prime consultant's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

The Department has prepared a list based on Federal Regulations of some of the kinds of efforts that consultants may make in obtaining DBE participation. It is not intended to be a mandatory checklist. The Department does not require that a consultant do any one, or particular combination, of the things on the list, nor is the list intended to be exclusive or exhaustive; it merely offers examples. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a consultant has made good faith efforts, it will usually be important for the Department to look not only at the different kinds of efforts that the Consultant has made, but also of the timeliness, quantity, and intensity of these efforts.

The Department offers the following examples of efforts that may be considered:

A. Soliciting through all reasonable and available means (e.g., attendance at project showings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The consultant must solicit this interest within sufficient time to allow the DBEs to participate effectively. The consultant must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible

units to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

D. (1) Negotiating in good faith with interested DBEs. It is the consultant's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

D. (2) A consultant using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's costs, qualifications and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a consultant's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the consultant of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority community organizations; minority contractors' groups; local, state, and Federal minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(c100II1-0710)

VDOT SUPPLEMENTAL SPECIFICATIONS (SSs), SPECIAL PROVISIONS (SPs) AND SPECIAL PROVISION COPIED NOTES (SPCNs)

Where Virginia Department of Transportation (VDOT) Supplemental Specifications, Special Provisions and Special Provision Copied Notes are used in this contract, the references therein to "the Specifications" shall refer to the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2007 for both imperial and metric unit projects. References to the "Road and Bridge Standard(s)" shall refer to the *Virginia Department of Transportation Road and Bridge Standards*, dated 2008 for both imperial and metric unit projects. References to the "Virginia Work Area Protection Manual" shall refer to the *Virginia Work Area Protection Manual*, dated May 1, 2005 for imperial and metric unit projects.

Where the terms "Department", "Engineer" and "Contract Engineer" appear in VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes used in this contract and the VDOT publication(s) that each references, the authority identified shall be in accordance with the definitions in Section 101.02 of the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2007. Authority identified otherwise for this particular project will be stated elsewhere in this contract.

VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes used in this contract and the VDOT publication(s) that each reference are intended to be complementary to the each other. In case of a discrepancy, the order of priority stated in Section 105.12 of the *Virginia Department of Transportation Road and Bridge Specifications*, dated 2007 shall apply.

VDOT Special Provision Copied Notes in this contract are designated with "(SPCN)" after the date of each document. VDOT Supplemental Specifications and Special Provision Copied Notes in this contract are designated as such above the title of each document.

The information enclosed in parenthesis "()" at the left of each VDOT Special Provision Copied Note in this contract is file reference information for VDOT use only. The information in the upper left corner above the title of each VDOT Supplemental Specification and VDOT Special Provision in this contract is file reference information for VDOT use only.

The system of measurement to be used in this project is stated elsewhere in this contract. VDOT Supplemental Specifications, Special Provisions and Special Provision Copied Notes containing imperial units of measure with accompanying expressions in metric units shall be referred to hereinafter as "dual unit measurement" documents. Such a "dual unit measurement" is typically expressed first in the imperial unit followed immediately to the right by the metric unit in parenthesis "()" or brackets "[]" where parenthesis is used in the sentence to convey other information. Where a "dual unit measurement" appears in VDOT documents, the unit that applies shall be in accordance with the system of measurement as stated elsewhere in this contract. The unit shown that is not of the declared unit of measurement is not to be considered interchangeable and mathematically convertible to the declared unit and shall not be used as an alternate or conflicting measurement. Where VDOT Specifications are used for metric unit projects and only imperial units of measurement appear the document, the provision(s) in this contract for imperial unit to metric unit conversion shall apply.

6-9-10 (SPCN)

PERSONNEL REQUIREMENTS FOR WORK ZONE TRAFFIC CONTROL

Section 105.14—Maintenance During Construction

- Section 105 and 512 of the Specifications are amended as follows:

Section 105.14—Maintenance During Construction is amended to add the following:

The Contractor shall provide at least one person on the project site during all work operations who is currently verified either by the Department in Intermediate Work Zone Traffic Control, or by the American Traffic Safety Services Association (ATSSA) as a Traffic Control Supervisor (TCS). This person must have the verification card with them while on the project site. This person shall be responsible for the oversight of work zone traffic control within the project limits in compliance with the contract requirements involving the plans, specifications, the VWAPM, and the MUTCD. This person's duties shall include the supervision of the installation, adjustment (if necessary), inspection, maintenance and removal when no longer required of all traffic control devices on the project.

If none of the Contractor's on-site personnel responsible for the supervision of such work has the required verification with them or if they have an outdated verification card showing they are not currently verified either by the Department in Intermediate Work Zone Traffic Control, or by the American Traffic Safety Services Association (ATSSA) as a Traffic Control Supervisor (TCS) all work on the project will be suspended by the Engineer.

The Contractor shall provide at least one person on site who is, at a minimum, verified by the Department in Basic Work Zone Traffic Control for each construction and/or maintenance operation that involves installing, maintaining, or removing work zone traffic control devices. This person shall be responsible for the placement, maintenance and removal of work zone traffic control devices.

In the event none of the Contractor's on-site personnel of any construction/maintenance operation has, at a minimum, the required verification by the Department in Basic Work Zone Traffic Control, that

construction/maintenance operation will be suspended by the Engineer until that operation is appropriately staffed in accordance with the requirements herein.

Section 512.03 Procedures is amended to add (r) **Work Zone Traffic Control** as the following:

- (r) **Work Zone Traffic Control:** The Contractor shall provide individuals trained in Work Zone Traffic Control in accordance with the requirements of Section 105.14 of the Specifications.

Section 512.04 Measurement and Payment is amended to add the following:

Basic Work Zone Traffic Control – Separate payment will not be made for providing a person to meet the requirements of Section 105.14 of the Specifications. The cost thereof shall be included in the price of other appropriate pay items.

Intermediate Work Zone Traffic Control - Separate payment will not be made for providing a person to meet the requirements of Section 105.14 of the Specifications. The cost thereof shall be included in the price of other appropriate pay items.

6-11-09a (SPCN)

(c105hf1-0309)

SECTION 105.06 SUBCONTRACTING of the Specifications is amended to include the following:

Any distribution of work shall be evidenced by a written binding agreement on file at the project site. Where no field office exists, such agreement shall be readily available upon request to Department inspector(s) assigned to the project.

The provisions contained in Form FHWA-1273 specifically, and other federal provisions included with the prime Contract are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into all contracts, as well as, appropriate subcontracts for work so as to be binding in those agreements.

12-19-08 (SPCN)

Reissued July 2008

Predetermined Minimum Wage Rates

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON
DECISION OF THE SECRETARY

This case is before the Department of Labor pursuant to a request for a wage predetermination as required by law applicable to the work described.

A study has been made of wage conditions in the locality and based on information available to the Department of Labor the wage rates and fringe payments listed are hereby determined by the Secretary of Labor as prevailing for the described classes for labor in accordance with applicable law.

This wage determination decision and any modifications thereof during the period prior to the stated expiration date shall be made a part of every contract for performance of the described work as provided by applicable law and regulations of the Secretary of Labor, and the wage rates and fringe payments contained in this decision, including modifications, shall be the minimums to be paid under any such contract and subcontractors on the work.

The contracting officer shall require that any class of laborers and mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the Secretary for determination.

Before using apprentices on the job the contractor shall present to the contracting officer written evidence of registration of such employees in a program of a State apprenticeship and training agency approved and recognized by the U.S. Bureau of Apprenticeship and Training. In the absence of such a State agency, the contractor shall submit evidence of approval and registration by the U.S. Bureau of Apprenticeship and Training.

The contractor shall submit to the contracting officer written evidence of the established apprentice-journeyman ratios and wage in the project area, which will be the basis for establishing such ratios and rates for the project under the applicable contract provisions.

Fringe payments include medical and hospital care, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance (all designated as health and welfare), pensions, vacation and holiday pay, apprenticeship or other similar programs and other bona fide fringe benefits.

By direction of the Secretary of Labor



E. Irving Manger, Associate Administrator
Division of Wage Determinations
Wage and Labor Standards Administration

VDOT Certification Regarding Debarment or Suspension by any Federal Department or Agency

Page 101

VDOT FORM - Certification by Sub-Consultant – if applicable

CERTIFICATION REGARDING DEBARMENT

LOWER TIER COVERED TRANSACTIONS

(To be completed by a **Sub-consultant**)

Firm: _____

Project: _____

- 1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the offeror for contracts to be let by the Commonwealth Transportation Board.

<i>Signature</i>	<i>Date</i>	<i>Title</i>
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Name of Firm

B. FEDERAL CERTIFICATION REGARDING LOBBYING PURSUANT TO 49 CFR PART 20

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Authorized Official

Date

Printed/Typed Name and Title of Authorized Official

NAME OF FIRM: _____

FEDERAL CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Arlington County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Arlington County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them or commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statute or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Signature of Authorized Representative

Date

Printed/Typed Name & Title of Authorized Representative

NAME OF FIRM: _____

☐ I am unable to certify to the above statements. My explanation is attached.